Hanging in the Balance
Community Participation in the Springvale Extension Development Proposal

By Hannah Della Bosca
Supervisor: Dr Josephine Gillespie

Thesis submitted in partial fulfilment of the requirements for Honours
University of Sydney, 2016
This thesis explores the way in which a contested coal mining development in the vicinity of Lithgow, New South Wales, was approved by the NSW Planning and Assessment Commission (PAC) in a decision-making process extended by an amendment to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (NSW). This analysis employs the principles of environmental justice within a legal geography approach to examine how communities mobilised their justice claims through different constructions of ‘local’ interest during the decision-making process. The role of the law in this decision-making process both supported and undermined the ability of environment opponents of this development to engage with and be equitably represented by the planning system. This analysis suggests that the interaction between the key decision-making processes in this case-study - the PAC, and a judicial review in the NSW Land and Environment Court – interacted in ways that resulted in the justice claims of particular human and non-human communities being misrepresented and silenced throughout the planning process. This paper engages with and contributes to contemporary debates about the rising influence of community participation as a form of decentralised environmental governance, and its capacity to deliver positive, and equitable, social and environmental outcomes in NSW.
ACKNOWLEDGEMENTS

It is both strange and exciting to be writing these acknowledgements, as it means this project, which has been a huge part of my life for the last eight months, is drawing to an end. I owe my thanks to the following people for helping it come into being.

My thanks to Dr Josephine Gillespie, my supervisor, for allowing me the freedom to pursue this project, and for providing both academic support and moral encouragement throughout the entire process. Without your enthusiasm and thoughtful guidance this project would not exist.

To all the participants who volunteered their time for this study, a most grateful thank you. This thesis, as well as my own understanding of the case study, was largely shaped through participant interviews and I am beyond grateful to everyone for their willingness to engage and share their thoughts and experiences with me.

To the friends I disappeared from for a couple of months, I’m back now. A huge thank you, in particular, to Barry and Cecily who were kind enough to take the time to read through some early chapters and give their two cents.

To all my family, particularly my Mum and Dad, who encouraged this project and supported me throughout a challenging, exciting and busy year. I love you all so much, and the conversations we had added much to my understanding of this case study.

Finally, to the Lithgow community. This research process has taught me so much about the meaning of community, and I am grateful to be from one that is so unique, proud and beautiful.
LIST OF FIGURES AND TABLES

LIST OF FIGURES

Figure 1 Location of the SEDP Area (DP&E, 2015b, p. 3) ................................................................. 2
Figure 2: Endangered Ecological Communities within the SEDP Area (PAC, 2015b, p. 20) ................. 4
Figure 3: The position of Springvale Colliery in relation to the Sydney Drinking Water Catchment Boundary ................................................................. 6
Figure 4: Research Objectives and research questions .................................................................... 10
Figure 5: Research steps .................................................................................................................. 11
Figure 6: SEDP timeline .................................................................................................................. 16
Figure 7: Summary of issues raised in objections to the first PAC (PAC, 2015b, p. 15) ................. 18
Figure 8: Lithgow’s Tourist Office features a large-scale miner’s lamp (Photograph by author, 2016) 28
Figure 9: Submission trends ......................................................................................................... 70
Figure 10: Coded content between pro forma submissions ............................................................ 70

LIST OF TABLES

Table 1: Research objectives, questions and research methods ..................................................... 45
Table 2: Comparison of the submissions received by the PAC and those used in this study .......... 49
Table 3: NVIVO themes, nodes and criteria ..................................................................................... 50
Table 4: Identified ‘direct’ and ‘indirect’ stakeholder groups ............................................................ 51
Table 5: Interview participant and type ............................................................................................ 52
Table 6: Interview guide for direct stakeholders .......................................................................... 53
Table 7: Interview guide for indirect stakeholders .......................................................................... 54
Table 8: Support and opposition for the SEDP expressed in PAC submissions (Merit and Determining PAC submissions combined) ........................................................................ 66
Table 9: Coded content in written original PAC submissions .......................................................... 72
Table 10: Coded content in verbal PAC submission content ............................................................ 72
Table 11: Examples of antagonism directed towards environmental groups and their claims in written and verbal PAC submissions ......................................................... 75
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMCS</td>
<td>Blue Mountains Conservation Society</td>
</tr>
<tr>
<td>DPE</td>
<td>NSW Department of Planning and Environment</td>
</tr>
<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
</tr>
<tr>
<td>EEC</td>
<td>Ecologically Endangered Community</td>
</tr>
<tr>
<td>EJ</td>
<td>Environmental Justice</td>
</tr>
<tr>
<td>EPA</td>
<td>NSW Environmental Protection Authority</td>
</tr>
<tr>
<td>EP&amp;A Act</td>
<td><em>Environmental Planning and Assessment Act 1979 (NSW)</em></td>
</tr>
<tr>
<td>EPBC Act</td>
<td><em>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</em></td>
</tr>
<tr>
<td>IESC</td>
<td>Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development</td>
</tr>
<tr>
<td>LEC</td>
<td>NSW Land and Environment Court</td>
</tr>
<tr>
<td>LEG</td>
<td>Lithgow Environmental Group</td>
</tr>
<tr>
<td>NPSS</td>
<td>Newnes Plateau Shrub Swamps</td>
</tr>
<tr>
<td>OEH</td>
<td>NSW Office of Environment and Heritage</td>
</tr>
<tr>
<td>PAC</td>
<td>Planning and Assessment Commission</td>
</tr>
<tr>
<td>THPSS</td>
<td>Temperate Highland Peat Swamps on Sandstone</td>
</tr>
<tr>
<td>TSC Act</td>
<td><em>Threatened Species Conservation Act 1995 (NSW)</em></td>
</tr>
<tr>
<td>Mining SEPP</td>
<td>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (NSW)</td>
</tr>
<tr>
<td>NorBE</td>
<td>Neutral or Beneficial Effect</td>
</tr>
<tr>
<td>SDWC</td>
<td>Sydney Drinking Water Catchment</td>
</tr>
<tr>
<td>SEDP</td>
<td>Springvale Extension Development Proposal</td>
</tr>
<tr>
<td>SEPP (SDWC)</td>
<td><em>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (NSW)</em></td>
</tr>
<tr>
<td>SEDP</td>
<td>Springvale Extension Development Proposal</td>
</tr>
</tbody>
</table>
LIST OF LEGISLATION

International
Convection of Biological Diversity 1760 UNTS 79; 31 ILM 818 (1992)

Federal
Environment Protection and Biodiversity Conservation Act 1999 (Cth)

New South Wales
Environmental Planning and Assessment Act 1979 (NSW)
Heritage Act 1977 (NSW)
National Parks and Wildlife Act 1974 (NSW)
State Environmental Planning Policy (State and Regional Development) 2011 (NSW)
State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (NSW)
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (NSW)
Threatened Species Conservation Act 1995 (NSW)
APPENDICES

Appendix A: Correspondence with the Planning Assessment Commission
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>iii</td>
</tr>
<tr>
<td>LIST OF FIGURES AND TABLES</td>
<td>iv</td>
</tr>
<tr>
<td>LIST OF ABBREVIATIONS</td>
<td>v</td>
</tr>
<tr>
<td>LIST OF LEGISLATION</td>
<td>vi</td>
</tr>
<tr>
<td>APPENDICES</td>
<td>vii</td>
</tr>
<tr>
<td>CHAPTER ONE: INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>1.1 The Springvale Extension Development Proposal</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Conceptual Approach</td>
<td>7</td>
</tr>
<tr>
<td>1.3 Thesis Rationale and Outline</td>
<td>9</td>
</tr>
<tr>
<td>CHAPTER TWO: SEDP DECISION-MAKING PROCESS</td>
<td>13</td>
</tr>
<tr>
<td>2.1 The role of the Planning Assessment Commission</td>
<td>13</td>
</tr>
<tr>
<td>2.2 The Decision-Making Process of the SEDP</td>
<td>17</td>
</tr>
<tr>
<td>2.2.1 The First Springvale PAC (Review)</td>
<td>17</td>
</tr>
<tr>
<td>2.2.2 NSW Mining SEPP Amendment</td>
<td>19</td>
</tr>
<tr>
<td>2.2.3 The Second Springvale PAC (Determination)</td>
<td>20</td>
</tr>
<tr>
<td>2.2.4 Judicial Review filed by 4Nature in the NSW Land and Environment Court</td>
<td>21</td>
</tr>
<tr>
<td>2.3 Environmental Objections to the SEDP</td>
<td>21</td>
</tr>
<tr>
<td>2.3.1 Threat to Upland Swamps</td>
<td>22</td>
</tr>
<tr>
<td>2.3.2 Threat to Local and Regional Water Quality</td>
<td>24</td>
</tr>
<tr>
<td>2.4 Reactions to SEDP Environmental Opposition</td>
<td>26</td>
</tr>
<tr>
<td>2.4.1 Lithgow as a ‘coalmining’ town</td>
<td>26</td>
</tr>
<tr>
<td>2.4.2 Lithgow reactions to the environmental opposition of the SEDP</td>
<td>28</td>
</tr>
<tr>
<td>2.5 Summary</td>
<td>29</td>
</tr>
<tr>
<td>CHAPTER THREE: COMMUNITY AS CATALYST</td>
<td>30</td>
</tr>
<tr>
<td>3.1 What is Environmental Justice?</td>
<td>30</td>
</tr>
<tr>
<td>3.1.1 Australian Context</td>
<td>32</td>
</tr>
<tr>
<td>3.1.2 Why is community participation so important to environmental (justice) outcomes in NSW?</td>
<td>33</td>
</tr>
<tr>
<td>3.1.3 Overcoming the ‘spatial blindness’ of the law</td>
<td>36</td>
</tr>
<tr>
<td>3.1.4 Engaging with the concept of community in space</td>
<td>38</td>
</tr>
<tr>
<td>3.1.5 Identity of Place</td>
<td>38</td>
</tr>
<tr>
<td>3.1.5 Scale: A Matter of Balance</td>
<td>39</td>
</tr>
<tr>
<td>3.2 Who is the community?</td>
<td>40</td>
</tr>
</tbody>
</table>
3.2.1 Barriers to Community Participation ................................................................. 42

3.3 Summary .................................................................................................................. 44

CHAPTER FOUR: METHODS ......................................................................................... 45

4.1 Methods .................................................................................................................. 45

4.2 Courtroom Observation .......................................................................................... 46

4.3 Critical Discourse Analysis ....................................................................................... 46

4.3.1 Excel Analysis ..................................................................................................... 47

4.3.2 NVIVO Analysis .................................................................................................. 49

4.4 Semi-structured Interviews ...................................................................................... 50

4.4.1 Direct Stakeholder Interviews ............................................................................. 53

4.4.2 Indirect Stakeholder interviews ......................................................................... 54

4.5 Limitations ............................................................................................................... 54

4.6 Positionality ............................................................................................................ 54

4.7 Summary .................................................................................................................. 57

CHAPTER FIVE: SPACE AND THE BALANCE OF LAW IN THE SEDP ....................... 58

5.1 The substantive impacts of the PAC ....................................................................... 58

5.1.1 Community expectations as a foundation for decision-making ....................... 59

5.1.2 The construction of ‘local’ ................................................................................ 63

5.1.3 Differences in how communities mobilised their justice claims ...................... 69

5.1.4 Participation as a social threat .......................................................................... 74

5.2 The cohesiveness of the NSW decision-making system ....................................... 77

5.2.1 Process rather than quality of outcome ............................................................. 77

CHAPTER SEVEN: CONCLUSION .............................................................................. 89

REFERENCES ............................................................................................................... 92

APPENDIX A .................................................................................................................. 98
CHAPTER ONE: INTRODUCTION

Clashing opinions, priorities and understandings of the world mean that disagreement, and even conflict, over land-use is a part of life in contemporary Australia. Conflict is, after all “the cornerstone of democracy” (Thomashow, 1989, p. 66). The purpose of this research is to engage with the procedural decision-making mechanism that are currently in use for state significant developments in NSW in order to identify how processes address conflict in order to alleviate or perpetuate inequitable environmental and social outcomes.

1.1 The Springvale Extension Development Proposal

This case study examines the Springvale Extension Development Proposal (SEDP), a development plan submitted to the NSW Department of Planning and Environment (DPE) for approval in early 2014. The proponent of the SEDP was Centennial Coal’s Springvale Colliery, a coal mine located in Wallerawang, a small township 10 km north west of Lithgow and 150 km west of Sydney, New South Wales (Figure 1).

---

1 Springvale Colliery is owned by Centennial Coal Pty Ltd, a subsidiary of the Thai-owned Banpu Public Co Ltd, and the Korean-owned SK Kores Australia Pty Ltd.
Figure 1 Location of the SEDP Area (DP&E, 2015b, p. 3)²

² Modified for clarity from the DP&E Report on the SEDP
The SEDP outlined a plan to extend the existing operation area of the Springvale Colliery by 5,810 hectares, the majority of which lies on Newnes Plateau within the Newnes State Forest. This extension allows an additional twenty longwalls to be mined, from which 4.5 million metric tonnes of coal will be extracted per year over the next 13 years, generating 310 jobs and up to $368 million in operation incomes, state royalties and taxes (PAC, 2015b). It will also impact, and potentially impact, two areas of environmental significance. These areas prompted two strands of opposition to the project, outlined below.

One strand of opposition to the project arose due to the threat posed by the development to threatened swamp communities. The proposed longwall mining operations are located directly beneath communities of Newnes Plateau Shrub Swamp and Newnes Plateau Hanging Swamp (Figure 2). Both are listed as Endangered Ecological Communities (EECs) under the Threatened Species Conservation Act 1995 (NSW) (TSC Act), indicating that they are at very high risk of extinction in New South Wales. In addition to this, the Newnes Plateau Hanging Swamp is classified as a Temperate Highland Peat Swamps on Sandstone (THPSS), an EEC listed under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) as having a very high risk of extinction in the wild. The NSW Office of Environment and Heritage estimates that the THPSS within the SEDP area represents between twelve to fifteen percent of the total existing species. Longwall mining is listed as a Key Threatening Process for these communities under Schedule 3 of the TSC Act due to the elevated risk of mining-related subsidence, whereby the stress caused by longwall extraction can lead to fractures in the surface area and lead to ecological damage.

3 Managed for both conservation and natural resource use under the National Parks and Wildlife Act 1974 (NSW).
Figure 2: Endangered Ecological Communities within the SEDP Area (PAC, 2015b, p. 20)
The second strand of opposition comes from Springvale’s position within the Sydney Drinking Water Catchment (SDWC). Any development in the SDWC is assessed under the criteria specified in the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (NSW) (SEPP SDWC). A primary aim of this policy is to prevent any development that fails to demonstrate a neutral or beneficial effect on water quality.

Springvale’s low elevation on Newnes Plateau results in surface and ground water permeating the mine, and requires dewatering pumps to work constantly to keep the mine dry. This process results in high quantities of saline water being discharged into local waterways, including the Cox’s River, via mine discharge points. Springvale’s water is not treated, with salinity levels currently three times the level recommended by the Australian and New Zealand Environment Conservation Council (ANZECC) guidelines (ANZECC, 2000). Whilst Springvale is currently working with the NSW Environmental Protection Authority (EPA) to decrease the salinity of mine water discharge, approving the SEDP would extended this practice by thirteen years. Whilst this process impacts local aquatic ecosystems, the main opposition to this aspect of the development arises due to the fact that Cox’s River flows west of the Blue Mountain’s and into Warragamba Dam, the drinking water supply for over 80 percent of the Sydney region (Figure 3).
Figure 3: The position of Springvale Colliery in relation to the Sydney Drinking Water Catchment Boundary

Composite of the catchment boundary map (DP&E, 2011) and the SEDP area detailed in the first PAC Report (PAC, 2015b, p. 23)
The significance of the environmental features likely to be impacted by the SEDP triggered opposition from both local and regional environmental groups. This was countered by support for the project, in which two factors were particularly significant. Springvale’s development application highlighted the significance SEDP approval in maintaining a local supply of coal to the nearby Mt Piper Power Station, which generates fifteen percent of the electricity supply for NSW. Overwhelming support for the SEDP also came from the residents in the Lithgow region\(^5\), where coal mining employment plays a significant economic, social and cultural role. The concerns of opponents and advocates of the SEDP were represented to the decision-making authority, the Planning and Assessment Commission (PAC), in distinct ways. The decision-making processes, and particularly the differences between stakeholder engagement with mandated decision-makers and with each other, form the crux of this case study.

### 1.2 Conceptual Approach

The purpose of this study is to examine the two-way relationship between community participation in procedural environmental decision-making, and the resultant environmental outcomes. This investigation is grounded by the context of the SEDP site, as it both shapes and is shaped by the nature of decision-making. It is conceptually significant that Springvale’s coal reserves are a product of these EECs (McCabe, 1984), which also contribute to and are reliant on the unique upland hydrology of the area (Kohlhagen et al., 2013). This immediately establishes the symbiotic network connection between the environmental factors which are central to the SEDP. On this ecological foundation, we can layer on the human relationships

---

\(^5\) Reference to Lithgow residents is inclusive of residents of Wallerawang, Portland, and Marangaroo and elsewhere in the region. This term has been used for simplicity.
that contribute to the site. Development at Springvale was motivated because of the utility and economic benefit of coal extraction, and is directly attributed to the environmental services of the swamp that produced it. The ecological sensitivity of the site’s EECs triggered dense legal protection, which then interact with the economic values embedded in the coal beneath them. In this way, the SEDP site is understood as being structurally predisposed to being an area that facilitates interaction. It becomes a site of contestation when social groups embed different values and expectations within this site, which dictate how they want it to be used. The purpose of this study is to investigate how, and why, this contestation is escalated to conflict through regulatory decision-making process.

The high degree of environmental regulation attached to the site shapes and bounds this contestation. This study employs the tools of legal geography to “make the invisible visible” (Bartel et al., 2013, p. 339) to reveal the way legal and bureaucratic processes both shape, and are shaped by, place. The principles of environmental justice (EJ) are integrated within a legal geography approach in order to examine the equity of environmental governance dimensions of the SEDP decision-making process. In this, space and scale are employed in order to ‘make visible’ the formal and informal processes of environmental decision-making that inhibited or enabled the equitable participation of different communities in deciding the fate of the SEDP site. By examining how these often overlooked or unobserved factors work to influence who participates, and how they participate, this study will critically engage with, and contribute to a deeper understanding of the role and impact of procedural environmental decision-making in NSW.
1.3 Thesis Rationale and Outline

The overarching aim of this thesis is to critically assess the ways in which procedural decision-making incorporates community participation in order to produce environmental and social outcomes. This aim requires an analysis of multiple and overlapping interactions: between the legal frameworks triggered by the SEDP and the bureaucratic decision-making process executed by the PAC, between opponents and advocates of the SEDP, and between community participants and the PAC.

In order to represent the intersections between these differently scaled and spatially relevant factors, the analysis is structured around the two research objectives (ROs, Figure 4). RO1 seeks to establish how the specific social and environmental context of the SEDP interacted with environmental decision-making processes, and how this impacted the experience of participation for different stakeholder groups. The two research questions are overlapping, yet represent the distinct purview of the combined EJ and legal geography frameworks at work in the study. Question 1 involves a legal geography analysis in which community participation processes are deconstructed and examined to ascertain the role of scale and space on the decision-making process. This lays the groundworks for Question 2, which investigates how these scalar and spatial implications relate to participation equity, explicitly drawing the two conceptual frameworks together.

The purpose of RO2 is to provide a broader understanding of the implications of this case study analysis on a critical evaluation of whether the NSW environmental governance framework achieves environmental justice. Question 3 combines spatial and scalar analysis to critically assess the relationship between environmental process and environmental justice.
A three-tiered fieldwork methodology was employed to address the study RO’s (Figure 5). The research approach featured a progressive structure in which each step contributed to a deeper understanding of the SEDP, and formed the basis of the successive research step. This cumulative progression of fieldwork fostered a natural escalation of content depth, nuance and complexity. By incorporating methods that generate legal, procedural and participant experiential data respectively, this research design mirrors three central aspects of the SEDP case in order to achieve its ROs.
The structure of each chapter in this thesis relates to both ROs in overlapping yet distinct ways. This chapter has provided an overview of the SEDP, identified the objectives driving this research, and briefly outlined the conceptual and methodological approach used to explore them. This conceptual foundation is expanded through the chapters outlined below.

Chapter Two will provide the case study detail necessary to contextualise this analysis, and serves three purposes. First, it will outline the SEDP decision-making process. It will then introduce the environmental groups who engaged in the SEDP planning process, and provide a more detailed overview of their environmental objections. Finally, it will then touch upon Lithgow’s historical context and provide further details of local reactions to this opposition.

Chapter Three engages with the conceptual development of EJ, and identifies its utility in extending legal geography’s capacity to engage with the implications of community participation in this case.
Chapter Four details the three primary fieldwork methods used to achieve the ROs and to answer the research objectives, before highlighting the limitations of this study and the positionality of the research.

Chapter Five presents the findings of the three research methods employed to address the ROs of this case study. The first section will present the findings of PAC submission analysis and semi-structured interviews with direct and indirect stakeholders involved in the SEDP decision-making process. In doing so it will address RO1 by establishing the context and substantive impacts of community participation regarding the SEDP, and reflect on the procedural engagement of the PAC with the claims of different communities. The second section will focus on the findings of the courtroom observation of 4Nature’s judicial review case in the NSW Land and Environment Court, and use these proceedings to inform an evaluation of the effectiveness of the environmental decision-making framework at work in NSW.

Chapter Six concludes the thesis by reflecting on the implications of the findings of this research, and the increasing necessity to critically engage with the decision-making mechanisms of the state through case study analysis.
CHAPTER TWO: SEDP DECISION-MAKING PROCESS

This chapter proceeds in three sections that contextualise this analysis. The first will outline the role of the PAC in the decision-making process for the SEDP. The second section will introduce the main environmental groups that opposed the SEDP, and provide additional detail on nature of their objections to the project. The third will provide a brief background of the SEDP’s social and cultural context, before outlining the reaction that environmental opposition to the SEDP garnered in Lithgow.

2.1 The role of the Planning Assessment Commission

As a coal mining development application, the SEDP was classed as a ‘State Significant Development’ under the *NSW State Environmental Planning Policy (State and Regional Development)* 2011. As a result, the environmental impact statement for the project was made publically available from the 12 April until 26 May 2014, during which time it received over 200 submissions in opposition. Uncontested state significant development applications are decided by the NSW Minister for Planning, however this opposition meant that the SEDP application was turned over to a PAC, an independent body established to act for the Minister under Schedule 3 of the EP&A Act.

Planning decisions in NSW are based primarily upon the EP&A Act, which is administered by the DP&E under the purview of the Minister for Planning. As such, environmental decision-making involves two distinct yet overlapping strands of legitimacy embedded in the planning system: the political, and the legal. The PAC is an “independent panel of experts” (PAC, 2015a).

---

6 Through 89C of the *Environmental Planning and Assessment Act 1979 (NSW)* (EP&A Act).
7 The use of the PAC is triggered when a development proposal application receives more than 25 objections.
available to review project applications for the NSW Department of Planning. This “panelisation of decision-making” (Williams, 2014, p. 426) is justified by the DP&E on the basis that it fulfills a call for greater “transparency and accountability in both plan making and proposal assessment” (Moore & Dyer, 2011, p. 26). The Minister of Planning delegates authority to the PAC in different ways depending on the development, using it to either fulfill a merit review or determining function. The PAC investigates the key factors about the development application by meeting with industry and state stakeholders, conducting public hearings, examining submissions from the public, and commissioning independent reports to assess the project impacts. The results of this process are compiled into a public report, with a recommendation on the approval for the development. In the PAC’s merit review function, this recommendation is passed on to the Minister for Planning, who decides the approval. In its determining function, the PAC itself decides the approval of the application.

The use of the PAC mechanism is a substantial factor in planning decisions because of the restrictions it places on the right of appeal process. State planning decisions can generally be appealed through either a merit review or a judicial review in the Land and Environment Court (NSW) (LEC). In a merit review, a judge or commissioner evaluates the planning proposal anew and delivers a decision based on the evidence placed before them (Preston, 2013). The use of the PAC restricts appeal rights to judicial review only, as long as a formal public hearing has been held. A judicial review has, by definition, an exclusive focus on process rather than the merit of environmental outcomes. In the absence of legal fault, the PAC decision cannot be challenged or appealed.

---

8 Constituted under 23B of the EP&A Act
9 Under Section 99 (7) of the EP&A Act
The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, referred to as the Mining SEPP, is the primary legislation governing the assessment and development of mineral and energy resources. As a result of an amendment to the Mining SEPP, two separate PACs were undertaken for the SEDP between April and October 2015 (Figure 6). The following section details this process.
Figure 6: SEDP timeline
2.2 The Decision-Making Process of the SEDP

The participants, processes and outcomes of PAC decision-making process for the SEDP form the subject matter and research interest of this research.

2.2.1 The First Springvale PAC (Review)\(^{10}\)

NSW Planning Minister Rob Stokes requested the PAC to carry out a merit review of the SEDP on 27 April 2015, and to “pay particular attention” to the potential swamp and water impacts of the project (PAC, 2015c). The commissioners reviewed the SEDP based on the DP&E’s Preliminary Environmental Assessment report, the SEDP Environmental Impact Assessment, site visits with an Office of Environment and Heritage representative, as well as meetings with representatives Centennial, the Lithgow Council, NSW Environment Protection Authority, the NSW Office of Water, and Water NSW.

The PAC also invited public input on the SEDP via submissions. Participants could email written submissions to the PAC website, or register with the PAC and present a verbal submission at a public hearing meeting. Individual participants are allocated five minutes to present submissions to the PAC, while groups are allocated fifteen minutes. The PAC hearing for the first PAC had thirty-eight registered speakers, and took place at the Lithgow Workman’s Club on Wednesday 27 May 2015, beginning at 9.15am.

The prominence of swamp and water discharge concerns can be seen in the summary of objections expressed through these PAC submissions (Figure 7).

---

\(^{10}\) Springvale Mine Extension Project - R031/15
The two main recommendations in the PAC report addressed these concerns concerning swamp subsidence and water quality impacts. Regarding mine discharge, they recommended that Springvale reduce the salinity of mine discharge\textsuperscript{11} within a two year period by working with the NSW EPA. Regarding subsidence, the PAC recommended adaptive management based on a swamp monitoring program. The PAC’s findings were collated into a report which recommended approval of the project subject to these environmental conditions and presented this recommendation to NSW Planning Minister Rob Stokes on 29 June 2015.

Environmental groups expressed dissatisfaction that the recommendations had not addressed the threat to protected swamps and transboundary water impacts that they had outlined in their submissions (Colong Foundation, 2015).

\textsuperscript{11} Treating the water was considered “prohibitively expensive and impractical” by Springvale, who prepared a report stating that treating the water would result in a 5% salinity increase in Lake Burragorang, compared to a 6% increase with treatment. Springvale was instructed to reduce the salinity of discharge to $350.0 \mu S/cm$ by 30 June 2017.
2.2.2 NSW Mining SEPP Amendment

In mid-2015, the DP&E announced a draft amendment to the Mining SEPP which would remove Clause 12AA. This clause directed the consent authority for mining development applications – the Minister or the PAC – to give principal consideration to the state and local economic impacts of development proposals. Removing Clause 12AA would reinstate a ‘triple bottom line’ approach, whereby the decision-making authority for any state significant mining development in NSW must attribute equal weight to factors of environmental, economic or social significance in assessment considerations. The draft amendment was put on public exhibition from 7 July 2015 to 21 July 2015, where it received a high level of support\(^ {12}\), and on 2 September 2015, Clause 12AA was repealed from the NSW Mining SEPP.

The impact of this legislation amendment was significant on the SEDP decision-making process. As noted, the PAC had already recommended approval of the SEDP in late June. However, the repeal of 12AA was not accompanied by any transitional arrangements to prevent retrospectivity and on 13 August, Minister Stokes instructed the PAC to review of the SEDP based on the, then proposed, amendment\(^ {13}\). This invalidated the PAC’s approval recommendation for the SEDP, triggering a second PAC process under the obligations of the amended Mining SEPP.

\(^{12}\) The amendment draft received 2,400 submissions, 98% of which supported the removal of Clause 12AA (DP&E, 2015c)

\(^{13}\) The official PAC request is authorised under 268R and 268V of the Environmental Planning and Assessment Regulation 2000, and 23D of the EP&A Act, which stipulate that the Minister can engage the PAC for any planning purpose. All references to this decision cite the proposed Clause 12AA amendment as the reason behind the second PAC was ordered.
2.2.3 The Second Springvale PAC (Determination)\textsuperscript{14}

The second PAC was constituted by the same decision-makers, who repeated the process of the first PAC, including calling for public submissions and holding a public hearing. This hearing was held in Lithgow on Thursday 3 September, only one day after Clause 12AA was officially repealed. Forty registered speakers presented submissions, beginning at 8:30am.

As a result of the second review process, the PAC made three recommendations concerning environmental impacts that expanded on those made in the first PAC. The recommendation outlined the use of an Independent Monitoring Panel to avoid, minimise or adaptively manage swamp impacts, the consideration of a transfer scheme between Springvale and Mt Piper power station for treatment, and a strengthened environmental planning approach. The conditions of the approval were that negligible impacts were caused by subsidence, and impacts did not exceed the limits set out in the SEDP Environmental Impact Statement. On 14 September the Minister ordered a determining PAC report, and on 21 September 2015, the PAC granted approval for the SEDP subject to the conditions of consent.

Environmental groups were not satisfied that the PAC had made adequate conditions of consent in the SEDP approval, and that their decision did not reflect the threat to upland swamps and water quality.

\textsuperscript{14} Springvale Mine Extension Project Second Review - R032/15}
2.2.4 Judicial Review filed by 4Nature in the NSW Land and Environment Court

On Friday 18 December 2015, the NSW Environmental Defenders Office filed a judicial review case on behalf of the 4Nature group in the NSW Land and Environment Court to challenge the SEDP approval. A conservation organization that advocates for environmental protection throughout Australia and the South Pacific, 4Nature contended that the PAC had incorrectly applied Clause 10 of Part 2 of the SEPP (SDWC). Clause 10 is a statutory prohibition, which states that development consent within the SDWC boundary cannot be granted unless a neutral or beneficial effect on water quality, referred to as ‘NorBE’, is demonstrated as a result of the project. 4Nature argued that the SEDP could not possibly result in NorBE in a correct application of the test due to the discharge point into the Cox’s River. The basis of 4Nature’s judicial appeal against the SEDP approval was that the PAC had not observed the statutory prohibition of Clause 10, rendering the approval unlawful. On 13 September 2016, Justice Pepper of the Land and Environment Court (NSW) dismissed 4Nature’s challenge.\(^{15}\) This decision is currently being appealed in the NSW Court of Appeal.\(^{16}\)

2.3 Environmental Objections to the SEDP

The SEDP faced consistent opposition from local and regional environmental groups. The main source of local opposition came from members of the Lithgow Environmental Group (LEG), a local volunteer group who undertake regular water quality testing and botanic cataloguing in the region, including on Newnes Plateau. The LEG, along with several other environmental groups, including the Blue Mountains Conservation Society (BMCS) and the

---

\(^{15}\) 4nature Incorporated v Centennial Springvale Pty Ltd [2016] NSWLEC 121
\(^{16}\) This appeal was announced on 14 October 2016. Dates are not yet listed.
Colo Committee, actively and consistently opposed the SEDP on the grounds that protection measures detailed in the proposal were insufficient and required amendment.

The Colong Foundation for Wilderness (Colong Foundation) was also in opposition to the SEDP and, along with local environmental groups, made extensive submissions to the PAC outlining environmental concerns with the proposal. As a Sydney-based wilderness advocacy group that is active and influential throughout Australia, the involvement of the Colong Foundation was significant in the PAC process as it mobilised significant opposition to the SEDP from its national support base. The Colong Foundation has long held an interest in the Newnes Plateau region and, along with the Colo Committee and the BMCS, has petitioned the NSW state government and the Lithgow Council to increase the environmental protections in the region by converting it and surrounding areas into a NSW conservation area (Muir, 2005). The concerns outlined in a Colong Foundation report on mining in the Newnes State Forest mirror those brought up in PAC submissions (Muir, 2010). The following sections detail these concerns.

2.3.1 Threat to Upland Swamps

The EECs on Newnes Plateau play a key hydrological role in the region by filtering water and moderating the flow of downstream watercourses (Kohlhagen et al., 2013). THPSS communities also provide the habitat for several uncommon and threatened flora and fauna.

The Gardens of Stone Park Proposal (Stage Two) was presented in 2005 would extend increase the conservation rating of Newnes Plateau while still allowing for mining development, albeit with increased levels of environmental scrutiny. LEG monitoring and observational data made a significant contribution to the proposal, supporting the necessity of increased protection to prevent further swamp deterioration in undermined areas of the Newnes Plateau.

---

17 The Gardens of Stone Park Proposal (Stage Two) was presented in 2005 would extend increase the conservation rating of Newnes Plateau while still allowing for mining development, albeit with increased levels of environmental scrutiny. LEG monitoring and observational data made a significant contribution to the proposal, supporting the necessity of increased protection to prevent further swamp deterioration in undermined areas of the Newnes Plateau.
species (Kohlhagen et al., 2013). Of significance is the Blue Mountains Water Skink (*Eulamprus leuarensis*), a species with a recovery plan under 269A of the EPBC Act, and the Giant Dragonfly (*Petalura gigangtea*), which is classified as endangered under the TSC. The fragility of this system to anthropogenic disturbance means that few examples of healthy swamp ecosystems exist outside of protected areas (Fryirs, Freidman, Williams, & Jacobsen, 2014).

The most significant threats to upland swamps come from mining-related subsidence, a process whereby pressure arising from the removal of the coal seam can cause the sandstone plateau upon which the swamps rest to crack (Lechner et al., 2012). This contributes to altered water courses and hydrological conditions in the swamp (Lechner et al., 2012). In some cases this can dry out swamps completely, replacing drought tolerant swamp vegetation with eucalypt trees, decreasing the bushfire resilience of the region (Lechner et al., 2012). Subsidence damage is irreversible, and the fluctuating nature of swamp characteristics means that only large scale damage to the system, such as cracking, is observable (Lechner et al., 2012).

This lack of observable change has implications for monitoring and documenting swamp damage. Mine Subsidence Engineering Consultants (MSCE) noted that Springvale had taken measures to minimise subsidence and swamp damage in the design area of the SEDP zone but that the limited data on subsidence-related swamp sensitivity made impacts difficult to predict (PAC, 2015b). This echoes a general consensus that the lack of baseline data and understanding regarding the ecological dynamics of these upland swamp communities impedes the efficacy of monitoring programs (Baird & Burgin, 2016; Fryirs, Freidman,

---

Williams, Jacobsen, et al., 2014; Kohlhagen et al., 2013). The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) were commissioned by the Federal Department of the Environment and the DPE to provide advice to the decision maker regarding the SEDP. Their report reinforced the inefficacy of monitoring and advised avoidance.

“It is highly likely that impacts to THPSS and dependent threatened species will be severe and potentially irreparable. Further, there is no scientific literature currently available to demonstrate the effectiveness of potential mitigation or remediation measures. The only known strategy to minimise impacts to THPSS is to alter the mine layout such that swamps are not undermined by longwall panels…” (IESC, 2014, p. 1)

This advice was not reflected in the recommendations made by the PAC in both its review and determination functions.

2.3.2 Threat to Local and Regional Water Quality

The potential transboundary impacts of Springvale’s discharge arose as a focal issue in the SEDP decision-making process due to its salinity. This salinity was understood to be a threat to the Sydney Drinking Water Catchment, as well as the ecological impacts on local streams. Springvale’s discharge was also considered a threat to the Outstanding Universal Value of the Blue Mountains World Heritage Area by some environmental groups.

19

19 Protected under Part 3 Subdivision A of the EPBC Act
The New South Wales Government regulates point-source mine waste discharge under the *Protection of the Environment Operations Act 1997 (NSW)* through the NSW Environment Protection Authority (EPA). The EPA issues industrial licences, permitting coal mines to discharge mine water into local streams, with the Act specifying concentration limits for various permitted pollutants to be discharged. This water is often significantly more saline than the baseline salinity of the streams it is discharged into, and can impact and alter aquatic system dynamics in large concentrations (Wright, 2012).

The SEDP involves the discharge of 19 megaliters of mine water daily (PAC, 2015b). As a result of a failed water transfer scheme\(^\text{20}\), in 2008 the EPA issued Springvale with an interim licence (EPL 3607) allowing electrical conductivity\(^\text{21}\) reading of up to 1200 μS/cm, with the intention of reducing it to 350 μS/cm over time. In 2013 Springvale reported conductivity readings for Licenced Discharge Point 009 between 1050-1120 μS/cm, and in 2014 between 1150-1200 μS/cm. These levels are significantly higher than both the Australian and New Zealand Environment Conservation Council guidelines EC at 350 μS/cm (ANZECC, 2000, pp. 3.3-11), and natural creek water which generally has a conductivity of 50 μS/cm (Sullivan et al., 2014).

---

\(^{20}\) The Springvale Water Transfer Scheme involved the mine discharge being pumped directly to Delta Electricity’s Wallerawang Power Station, who would use it as coolant. The scheme was commissioned in 2007 but ceased operations in 2008 when the station’s condensers failed, at which point the EPA provided Springvale with an emergency discharge license to discharge their water into the Cox’s River. Delta’s 2008 Annual Report attributes the failure of the scheme to inconsistent rainfall concentrating the salinity the cooling water (Delta Electricity, 2008). It is interesting to note that the Colong Foundation attribute the failure of the scheme to the high salinity of Springvale’s discharge and the fact that the scheme was approved under the *Pipelines Act 1967 (NSW)*, which does not require community consultation.

\(^{21}\) The measurement for salinity
Springvale’s ongoing discharge was thus flagged as a threat to the Sydney drinking water supply in the SEDP decision-making process. Springvale stated that the rise in salinity in Lake Burragarorang would be negligible and that treating the water would not be cost effective (PAC, 2015b). While the SEDP was not widely presented as a threat to the aquatic health of the Gardens of Stone World Heritage Area, the proximity of the SEDP site to the Gardens of Stone boundary (Figure 3, page 6) raised pockets of concern.

2.4 Reactions to SEDP Environmental Opposition

The above section has outlined the basis of environmental opposition to the SEDP, while also highlighting that the issues surrounding mining impacts on regional environmental quality are not unique to the SEDP. The purpose of this section is to briefly convey the social and cultural context of the SEDP through an overview of Lithgow’s mining history, which will be used to contextualise local reactions to the environmental opposition of the SEDP.

2.4.1 Lithgow as a ‘coalmining’ town

Lithgow is a semi-rural township with a local population of 21,249\textsuperscript{22}, of which 12.4\textsuperscript{23} percent are employed by the mining industry (ABS, 2014). Lithgow’s economic and social growth has historically been supported and sustained by regional industrial activities (Cremin, 1989) with coal mining playing a central role in its growth since 1868 (Christison, 2016; Patmore, 2000). Mining companies have historically played a central role in providing community services in Lithgow. Springvale, along with other regional mines, continues this association.

\textsuperscript{22} 2014 data

\textsuperscript{23} 2011 data
through community outreach initiatives involving local sporting organisations and charitable causes (Centennial, 2012).

Lithgow’s identity is characterised by the “cultural inheritance” of regional industry and coal mining (Christison, 2003, p. 1). Previous generations viewed mining and other heavy industry represented as a local disadvantage, however time and the increased prosperity of the town have developed this heritage into a proud identity (Cremin, 1989; Patmore, 2000). This celebration of identity can be seen in Ironfest, a popular tourist event celebrating the industrial past, and in Lithgow’s ‘big thing’, a traditional coal miner’s lamp that adjoins the Lithgow Information Centre (Figure 7). Whilst coalmining continues to play a central role in the local economy, its regional presence is decreasing (Christison, 2016) while health, education and other service industries are playing an increasingly significant role in the region (ABS, 2014).
2.4.2 Lithgow reactions to the environmental opposition of the SEDP

Controversy set the tone for much of the local coverage of environmental opposition to the SEDP, particularly after the SEPP (Mining) Amendment extended the decision-making process. During this time, the local newspaper, the Lithgow Mercury, reported the concerns of both environmental groups and SEDP advocates. However the overall tone of many articles was distinctly one sided, as on 16 May 2015, in which environmental opposition was characterised as a “‘campaign of lies’ waged by extreme environmental groups” (Ashworth, 2016). This was demonstrated in one of the first local articles concerning this opposition:

It was all very predictable; it was just a matter of when the first shots would be fired when extreme environmental groups step up their campaign to destroy the mining and power generation industries. (Ashworth, 2015a)
This reflects the characteristic reception of opposition to the SEDP. The air of controversy surrounding opposition was heightened when 230 Springvale employees were stood down in the period between August 21 and October 16 2015 while the PAC decision was made. Katie Brassil, a Centennial spokesperson states that the slowed operations at Springvale put Centennial in a “deplorable position”, and that the stand down was the result of “a broken NSW planning system” (Centennial, 2015). In contrast, Keith Muir, the director of the Colong Foundation, stated that it was a move facilitated to “leverage mine-extension approval” (Colong Foundation, 2015).

This stand down had a significant impact on the Lithgow population. In the period between the first and second PAC hearings, several events took place in Lithgow to bolster support for the SEDP, including an unofficial public hearing and a local rally. The rally was organised by the Lithgow branch of the Construction, Forestry, Mining and Energy Union in Lithgow’s Cook Plaza on 22 August 2015. This event was well attended, by both local government figures and regional colliery workers and their families (Ashworth, 2015b).

2.5 Summary

This chapter has provided an overview of the SEDP planning process, explored the environmental opposition to the case more thoroughly, and touched upon the social context of the SEDP site. The following chapter outlines the utility of incorporating principles of EJ within a legal geography approach in order to expand a critical engagement with factors of equitable community participation within procedural environmental decision-making.
CHAPTER THREE: COMMUNITY AS CATALYST

Human geography can be understood as the “science of the spatial” (Massey, 2013, p. 3) in which social and political networks are examined according to how they enable and disable changes in physical space. In this thesis, two approaches are used to frame the research: a legal geography sub-disciplinary perspective and an environmental justice conceptual approach. Legal geography situates this project within the legal landscape of environmental decision making (Bennett & Layard, 2015) by engaging with the “social spatialization” of law (Delaney, 2010a, p. 13), or the active acknowledgement that the lived experiences of people and environments both shape and are directly shaped by local manifestations of law. Considering that the law “codifies what can be done, where, and by whom” (Jepson, 2012, p. 616), the following chapter proceeds on two sections. The first outlines the reasons critical engagement with equity in environmental decision-making is a profitable avenue of investigation for legal geographers. The second presents some of the challenges associated with the ‘who’ and ‘how’ of community participation.

3.1 What is Environmental Justice?

EJ question how social and political power imbalances manifest in the physical world through environmental decision-making processes. The field developed out of a social movement in the United States in the late 1980s, when mapping demonstrated that areas inhabited by low-income communities of colour were disproportionately exposed to environmental hazards such as toxic waste facilities and waste dumps. The foundational work of Bullard & Wright (1990), Bullard (1992, 1993) and Cutter (1995) gave voice to a growing activist movement in African-American communities throughout the American south. EJ was a “politically charged”
movement that combined community activism and mobilisation with environmental analysis to demand equality (Cutter, 1995, p. 112). This scholarship exposed the relationship between African-American communities and unjust environmental patterns. Over time this focus changed from overt environmental harms to issues of urban health (Pulido, 2000; Sze, 2006). As it broadened geographically and conceptually, EJ scholarship increasingly focused on the “lived experience of oppressed people”, regardless of colour, who lived and worked in environments they had little control over (Heiman, 1996, p. 120). Thus, EJ is imbued with an understanding that procedural and substantive environmental inequity is result of community marginalisation, and must be addressed as such (Agyeman & Evans, 2004).

EJ scholarship radically changed when Schlosberg (2007) presented the equitable recognition and participation of all living systems - human, animal and plant – in processes of environmental decision-making as fundamental to achieving EJ.  

Schlosberg identified distribution, recognition, participation and capacity as central to EJ. Whilst this response focuses on the procedural participation and recognition of communities in the SEDP decision-making process, it is acknowledged that all four factors are inextricably interlinked. The concept of capacity as presented in Schlosberg’s Defining Environmental Justice is not explicitly incorporated into this analysis due to its scope, however it is acknowledged that capacity is inherently linked to participation as a preliminary enabling factor.
purview of EJ went beyond racially or socio-economically marginalised communities to include all human and non-human communities whose claims were not being acknowledged by procedural decision-making. This shift made more ‘space’ visible to environmental justice analysis, facilitating an increasing diversification in its application. In this broadening, EJ has retained a characteristic focus on community, and how communities work together to address perceived injustice in their environments. As Čapek (1993, p. 7) emphasises, “describing a situation as unjust is more than an act of categorisation. It implies a strategy for action.” This analysis of community mobilisation has been applied to topics as diverse as disaster response (Cutter, 2012), access to green space (Wolch et al., 2014) and media analysis (Cutts et al., 2016). The following section outlines how this broadening is reflected in the Australian literature.

3.1.1 Australian Context

EJ remains a nascent field of study in Australia, particularly in non-urban contexts, where it is described as “embryonic and patchy” (Masterman-Smith et al., 2016, p. 360). However, there is a growing body of case study analysis that focuses on how different communities mobilise through procedural community participation mechanisms. Community participation is considered a defining feature of Australian EJ in both “principle and practice” (Hillman, 2004, p. 34), so much so that Arcioni & Mitchell (2005) equate EJ with the equitability of community participation mechanisms. In his analysis of a waste facility siting in rural NSW, Jessup (2014, p. 73) describes this case study as having “the hallmarks of a typical environmental justice controversy”. Considering that EJ arose as “a challenge to the mainstream, white-middle class dominated environmental movement” (Pellow & Brulle, 2005, p. 16), this demonstrates how
pervasive Schlosberg’s incorporation of recognition and participation has been in shifting the analytical norms of the field. An acknowledgement of the bond between community identity, place, and space is central in recognizing that this procedural equity is owed “not only... to individuals, but to groups and communities as well” (Schlosberg, 2007, p. 5). As an increasingly common method of engaging with communities, the success of community participation in achieving procedural equity is both contested and vital. This is explored below.

3.1.2 Why is community participation so important to environmental (justice) outcomes in NSW?

Community participation is a mechanism of participatory environmental governance, whereby government authorities give the public “a voice in policy choices” by incorporating their input into development decisions (Bishop & Davis, 2002, p. 14). This input is gathered through public hearings and online submissions, which are hosted and evaluated by the state (Laurian, 2004).

The prominence of community participation inquiry in Australian EJ scholarship lends itself to an increasingly critical aspect of Australian environmental regulation under the ‘new collaborative environmental governance’ model (Gunningham, 2009b). This is the idea that the responsibility of environmental decision-making is, or should be, devolved from the state in the pursuit of more appropriate on-the-ground environment outcomes. Gunningham (2009a, 2009b) describes this shift as the increasing effort of the state to collaborate with a range of stakeholders, including local communities, in order to improve regulation. The efficacy of this thinking is demonstrated through more condition-appropriate regulation, in
which the vernacular knowledge of local communities is acknowledged and incorporated in the creation of more effective regulation (Bartel, 2014). An idealised version of community participation operates as both a participant responsibility to contribute to positive environmental outcomes (Summerville et al., 2008), and a participant right to “have a say” (Rydin & Pennington, 2000, p. 154). Whilst the underlying purpose of this shift was to address regulatory failure, the environmental governance devolution serves both environmental and social objectives. This social dimension is increasingly highlighted in environmental regulatory processes as a measure of justice, in that the views of communities of place are included in the decision-making process that govern their environment (Bartel, 2014). This is particularly significant for rural communities whose lived knowledge has traditionally been excluded from the formal legal sphere (Bartel, 2014).

The incorporation of this collaborative decision-making approach between the state and a range of public and industrial stakeholders is so pervasive in public planning policy that non-participatory decision-making is increasingly considered “illegitimate, ineffective and undemocratic” (Bulkeley & Mol, 2003, p. 144). It is legitimated as a way of increasing public confidence in the state (Finanzio, 2015) by improving the fairness (Smith, 2003) and quality (Stokes, 2012) of government decisions. However, the ability of community participation to reliably achieve these objectives and to deliver on this in both the social and environmental outcomes of community participation processes is contested, particularly regarding high-revenue land-use decisions (Koch, 2013; Taylor, 2007). Critics position community participation as a strategy that placates rather than empowers the general public (Irvin & Stansbury, 2004), arguing that the vulnerability of these mechanisms to co-option significantly impacts their substantive and procedural effectiveness (Coenen
et al., 2012). This co-option can occur through informal factors such as differing levels of community agency (Gaventa, 2004), and discourse domination at different scales (Hickey & Mohan, 2004). Considering that community participation mechanisms tend to be both expensive and time consuming (Irvin & Stansbury, 2004), it is essential that they are evaluated according to the quality and equity of their social and environmental outcomes. The potential benefit of a participatory governance approach is negated by these factors of vulnerability to co-option. Thus the reliability of community participation to provide interested stakeholders with an avenue to shape environment decisions is understood as theoretically sound, but practically ambiguous (Bulkeley & Mol, 2003). This highlights a need to systematically evaluate its efficacy by scrutinising “what kind of participation, by whom, to which purposes” (Pellizzoni, 2003, p. 213).

In NSW, the necessity for this scrutiny is amplified by the right of appeal limitations embedded in the use of the PAC, making community participation the most feasible avenue of community control over the social and environmental decisions of the state. As highlighted in section 2.1, PAC decisions can only be challenged if a case can be made that they misapplied the law, effectively making the substantive value of PAC decisions beyond the jurisdiction of the court. The ability of the judicial review format to give agency to different justice claims is structurally limited by the procedural norms of the court in which the ‘burden of proof’ rests with the applicant (Preston, 2013). In environmental challenges, this requirement means that the onus is on parties who challenge the PAC to produce legal proof that the decision was flawed, rather than for the PAC to demonstrate that it was legally sound. The allocation of this burden of proof leads Preston (2013) to question the ability of the law to provide procedural access to environmental justice communities who feel excluded or marginalized.
by state decisions. These limitations embedded in the structure and scope of the judicial review format makes critical evaluation of the processes of decision-making vital to the just allocation of social and environmental impacts in NSW.

3.1.3 Overcoming the ‘spatial blindness’ of the law

This approach to environmental governance “invites wider questions about resource use and the linkages between space, power, and society as a whole” (Turton, 2015, p. 63). It is precisely these linkages that make legal geography analysis of community participation’s place within the environmental governance framework critical, due to the fact that “law frequently operates as if space does not matter” (Bartel et al., 2013, p. 339). It is the work of legal geography to bridge the two worlds of spatial awareness and legal awareness, and this has been realised through approaches such as Delaney’s nomosphere (2014; 2010b), and the employment of scalar analysis to legal case studies (Bartel, 2014; Jessup, 2014). The purpose of this bridging is to ground environmental law by highlighting that it is a construct, employed to govern human-environmental actions. Law is not a fixed mechanism in which justice is embedded but rather is vulnerable to intentional and incidental co-option as a result of where and how it is employed. Both Bartel (2014; 2015) and Gillespie (2012, 2014) uncover the ways in which one-size-fits-all environmental regulation processes can be maladaptive when faced with the specificity of place, marginalising the people who live there in the process. Jessup’s work develops this idea that that quality of environmental decisions are entirely dependent on who’s perspectives are included in the process, but focuses on the (in)ability of legal avenues to remediate procedural exclusion (2010, 2014). This scholarship is defined by particular physical spaces and the communities that inhabit them, and questions how the law addresses procedural privilege or marginalisation when enacting environmental outcomes.
The law continues to play a significant role in contemporary environmental contestations, particularly against state planning decisions. Jessup’s case studies on the Orange Waste siting (2014) and the Port Phillip Channel Deepening Project (Jessup, 2010) highlight the way in which community groups who are disempowered against the state use legal means to mobilise and participate, though with varying levels of success. The landmark Bulga case allowed the local Hub Action Group\(^{25}\) to successfully oppose the NSW Minister for Planning’s approval of a waste facility in their town due to its environmental and social impacts. This demonstrates the way in which environmental groups tend to seek refuge in the legal system, making an expanded acknowledgement and understanding of the contextual and spatial impediments to its just function critical for improved social and environmental outcomes.

The role of the physical world, both human and non-human in shaping the effect and employment of the law is a blind-spot to legal practice because law “in all its discretionary and rule-bound variety, co-produces places through an attentiveness to, and sometimes an apparent dismissal of, spatiality” (Bennett & Layard, 2015, p. 406). Considering that law in the is often relied upon to “rescript narratives” (Jepson, 2012, p. 614), this spatial blindness impacts the ability of the law to consistently provide an avenue for justice because in not accounting for space, legal processes can become complicit in injustice. This is particularly acute as any consideration of place must acknowledge that “law is both felt and made (at least in part) locally” (Bennett & Layard, 2015, p. 3).

\(^{25}\) Hub Action Group v Minister for Planning, [2008] NSWLEC 116
3.1.4 Engaging with the concept of community in space

Combining EL within a legal geography framework throws into contrast their different constructions of the physical world. Legal geography investigations are characterised by interactions between “space” and law (Braverman et al., 2014, p. 2). According to Andrews and McCarthy (2014, p. 8), these investigations arguably pay too little attention to the environment “as both an object of governance and a terrain of struggle with respect to the law”. EJ’s recognition of the living world as not only influential on and influenced by the law, but as deserving of its protection in and of itself as an equal participant in the justice community must necessarily interact with the conception of the natural environmental as ‘space’. Thus we can see how legal geography’s purview is expanded by an EJ conception of space as community, and is thus capable of achieving radically different objectives. It is for this reason that Braveman et al. (2014, p. 2) state that incorporating additional fields of enquiry within legal geography examinations of space and law can profitably “transcend the bidisciplinary focus” for a more dynamic scholarship.

3.1.5 Identity of Place

Place identity is an understanding of the self in which the socio-political construction of a particular place is incorporated into the personal identity of an individual, (Hernández et al., 2010), or a community (Bartel & Graham, 2015). This has led to conceptions of “parochial” place identities in which the local is presented as either a “moral starting point and a locus of ecological concern” (Tomaney, 2013, p. 1), or a conservative approach that may, when “local interests and identities” are seen to be affected, lead to conflict (Bartel & Graham, 2015, p. 278). This fails to recognise that environmental communities already have an identity,
independent of the human relationship. The politics of spatial identity are thus of importance in environmental regulation and implementation, precisely because challenges in space are understood as a challenge to personal identity, authority and control (Bennett & Layard, 2015). Recognising the importance of the place-people connection is key in addressing environmental regulatory failures, as place attachment can drive maladaptive behaviours that impede positive environmental outcomes (Bartel et al., 2014). Ey & Sherval (2004) suggest that in mining communities and ‘minescapes’, this connection between place, identity and regulatory behaviour is heightened due to the impact of stigma, isolation and history. Minescapes thus present an area of particular interest to legal geographers precisely because regulation does not understand that “extractive industries cannot be understood superficially” (Ey & Sherval, 2016, p. 179) due to the intricate interplay between place and identity in these communities.

3.1.5 Scale: A Matter of Balance

Brown & Purcell (2005, p. 279) argue that there is “nothing inherent about any scale” because that which we call scale is the result of contextualised socio-political agendas which are often invoked as a “territorial framework for cultural legitimacy” (Kurtz, 2003, p. 895). By equating locality with legitimacy, inequalities and power struggles at the local scale are either rendered invisible or co-opted (Mohan & Stokke, 2000). Irvin & Stansbury (2004) suggest that not every decision needs community input, and that to apply a one-size-fits-all approach can be more harmful than helpful in attaining positive social and environmental outcomes. In noting the recent anthropocentric bias in environmental law reform in NSW, Bartel & Graham (2015) highlights that local knowledge can improve the quality of environmental regulation by
adding depth and nuance to policies, yet can also problematically resist the implementation of environmental law, with long-term and wide-scale relevance. Thus the quality of decision-making is a measure of its appropriateness in regards to the community it applies to and the nature of the problem. An Australian body of legal geographers, including Jessup (2014), Arcioni & Mitchell (2005), Bartel (2014) and Gillespie (Gillespie, 2014) underscore the value of the local in knowledge claims, and highlight the need for greater procedural acknowledgement (and weight) of the lived experience in environmental decisions. Far from advocating localism, these studies emphasise that it is the privileging of scaled knowledge that leads to injustice, be it the regional over the local (Jessup, 2014), the state over the individual (Arcioni & Mitchell, 2005; Bartel, 2014) or the international over the local (Gillespie, 2012). This trend away from reifying any particular scalar contribution towards a more balanced recognition of a wide variety of input is increasingly recognised as a central element of best-practice environmental decision-making (Bartel et al., 2014). The way to achieve this, according to Cash et al. (2006), is for procedural systems that minimise scalar boundaries, and move away from polarised environmental discourses that pit the legitimacy of one scale against another.

3.2 Who is the community?
In NSW, community participation is recognized as a foundational aspect of environmental policy creation and implementation. The NSW Department of Planning and Environment identifies community participation as:

“a key priority in order to capture and consider an appropriate diversity of views when making planning decisions...to ensure that planning outcomes respond, wherever possible, to the community’s needs, interests and concerns” (DP&E, 2015a, p. 7).

The adequacy of planning outcomes is thus evaluated through a lens of community satisfaction. This prompts the question – who is the community? Despite the centrality of community in the purpose and process of both NSW’s planning legislation and the department responsible for enacting it, there is no definition of community in either.

This is problematic because as Talen (2000, p. 172) points out “as an element of planning practice, the notion of community is not well thought out”. The rationale behind embedding environmental planning policy with references to community is that self-defined groups will respond to self-defined problems in “their area” (Lane & Corbett, 2005). However, identifying and defining “the” community in community participation is a complex and contested exercise. This is because understanding who is engaging with planning mechanisms increasingly requires an acknowledgement that both place-bound and placeless communities are active in crafting the socio-political sphere. Gusfield (1975) was the first to distinguish communities of place from communities of interest. The former is understood geospatially, and is often (but not always) bureaucratically recognised through units such as postcode, city, and neighbourhood. The latter is understood as a placeless alliance of common

---

26 It is acknowledged that the two are not mutually exclusive
interest, whose boundaries are invisible and whose existence may go unnoticed by non-members. Duane (1997, p. 772) expanded Garfield’s work to define placeless communities on their “commonalities in how they relate to a particular ecosystem or resource as beneficiaries of that place or contributors to its condition”. Thus, Duane’s definition of placeless communities lends itself easily to recognition of different environmental conservation and activist networks as communities. In this, the nomenclature of the classification of protected swamps as Endangered Ecological Communities under the TSC Act (NSW) and the EPBC Act (Cth) is significant. Spatial and scalar analysis reveals that both legal and non-legal factors dictate who is able to participate as a part of the community, calling into question the capacity of law to deliver environmental justice (Herbert et al., 2013).

3.2.1 Barriers to Community Participation

Systematic analysis of community participation tends to be done in terms of the environmental quality of decision-making outcomes (Coenen et al., 2012; Newig, 2007), the equitable treatment of participant information (Cvetkovich & Earle, 1994), and benefits to the state (Irvin & Stansbury, 2004). Very few acknowledge the two-way relationship between participation and participant, and the impact of participating on individuals. The following section examines the way in which, despite its democratic purview, mechanisms of community participation interact with space and scale in order to influence who participates, and how they participate.

Jessup’s (2010) case study of a development proposal to dredge Melbourne’s Port Phillip Bay channel demonstrates the way in which the strategic placement of participation events can
influence participation capacity and lead to biased outcomes. Environmental groups, primarily a Port Phillip alliance called the Blue Wedges Coalition, opposed the project as the dredging would necessarily involve disrupting contaminated sediment, decreasing water quality. In addition, the project planned to dispose of this sediment in an under-sea disposal area in Port Phillip. Public hearings for the development were held in Melbourne, where the benefits of the project would be felt, rather than in Port Phillip, where the environmental burden would be borne. In this way, the placement of the hearing acted as a barrier to attendance for Port Phillip residents. Whilst not insurmountable, this barrier made it less likely that opponents of the project could attend, procedurally marginalizing their perspective. Considering that verbal presentations and discussions tend to carry more weight in the minds of decision-makers than written submissions (Innes & Booher, 2004), this is a significant factor of bias in the decision-making process. Innes & Booher (2004) assessment of the physical experience of participation highlights its contrived nature. Verbal submissions must fit within the allotted timeframe, and within the scope and content focus defined by the decision-making authority. Participants are generally unable to ask questions of the decision-maker, or of each other in public hearings, making the exchange of information unilateral and heavily reliant on the direction of the decision-maker. This examination of the act of participation from the perspective of the participant underscores that while anyone can participate, how they participate is largely constricted by the parameters of the forum.
3.3 Summary

Environmental planning decisions are never going to please everyone, yet community participation can act as a “safeguard against the depoliticisation of environmental politics” (Walker & Bulkeley, 2006, p. 7) only if it is incorporated into transparent decision-making.

Equitable decision-making is not a measure of any particular type of outcome, but to evenly distribute the adverse effect of decisions among stakeholders so that while no-one totally wins, no one totally loses either.
CHAPTER FOUR: METHODS

This chapter will explain the methods and methodologies used in this study.

4.1 Methods

Fieldwork was carried out in Lithgow and Sydney between July and August of 2016. Interviews with direct stakeholders were held in Lithgow, the closest major town to the SEDP. Where possible, interviews were conducted face-to-face, either in the office of the participant or in the conference room of the Lithgow Library. Interviews with indirect stakeholders were held in Sydney, where the majority of state-wide environmental group and state administration offices are located. The feasibility of a face-to-face interviews with both direct and indirect stakeholders was not always possible due to the location of the participant or their schedule. In these cases a telephone interview was conducted.

A multi-method approach was used to achieve the ROs of the study, combining courtroom observation, critical discourse analysis and semi-structured stakeholder interviews, as outlined in Table 1.

Table 1: Research objectives, questions and research methods

<table>
<thead>
<tr>
<th>Research Objective</th>
<th>Research Questions</th>
<th>Courtroom Observation</th>
<th>Discourse Analysis (1893 submissions)</th>
<th>Semi-structured Interviews (16 interviews)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RO1</td>
<td>How did the spatial context of the Springvale Extension influence the who and how of community participation?</td>
<td></td>
<td>√</td>
<td></td>
</tr>
</tbody>
</table>


Courtroom Observation

Observation of the NSW Land and Environment Court case 4nature Inc v Centennial Springvale Pty Limited and Others took place on 9-10 May 2016. Courtroom observation is one of the most frequently and effectively employed methods in qualitative legal research (Watkins & Burton, 2013). This case was open to the public and handwritten notes were taken. Courtroom observation allowed firsthand observation of the legal proceedings and decision making concerning the SEDP case study, and the arguments and evidence presented in court identified different stakeholders and their perspectives.

Critical Discourse Analysis

Critical discourse analysis was used to examine the way socio-cultural dynamics are embedded in the text of social and political documents (Gee, 2014). This involved selecting, contextualising, and interpreting a wide range of documents relating to the study area (Bowen, 2009). Critical discourse analysis often features in case study qualitative
methodology as it highlights trends in how different organisations and individuals understand and position particular issues (Atkinson & Coffey, 2004). The primary source of documents for analysis were submissions made to the PAC. 2,223 submissions were made to the PAC over the course of the SEDP, of which 1,893 were publically available written or verbal submissions at the PAC website. 

4.3.1 Excel Analysis

| Purpose: Quantify and record how many submissions of each type (approve/oppose/neither) were made to the PAC regarding SEDP. |

The submissions were downloaded and logged manually in excel by name and position on the SEDP (approve/oppose/neither). This analysis resulted in quantitative data regarding how many submissions were made for each PAC and the nature of those submissions. A manual reading of the documents also highlighted the central arguments made on behalf of each position. There are two significant aspects of this process that require further explanation.

First, for analysis purposes, this study combined the submissions received by the PAC over the course of both the review and the determining PAC and analysed them together. As such there were two sources of duplication in the submission account. The first source of duplication arose if one participant made submissions to both the first and the second PAC. Accounting for this duplication would have achieved a more accurate representation of the

---

27 Petition submissions and submissions that were neither for nor against the SEDP comprise the additional 330 submissions. These are referenced only in an overall accounting of submissions, and were not included in discourse analysis.
number of unique participants who engaged with the PAC, but a less accurate representation of incidences of participation. Considering that the purpose of this method was to account for how many submissions of each type the PAC received over the course of the decision-making process, it was decided that representing incidences of participation would better serve the research aims of the study. The second source of duplication arose if one participant made multiple types of submission. For example, if a participant presented a verbal submission at a public hearing and also submitted a written submission with different content, this would be counted as two separate incidences of participation. Again this was justified in accordance with the aims of the study, but also because the PAC does not account for this type of duplication when accounting for and presenting submissions if the submission content is not a duplication. Using the same method of accounting for incidences of participation as the PAC allows this research the engage critically with the submissions trends presented to and used by the primary decision-making authority in this case.

Second, there is some discrepancy between the submission numbers reported by the PAC for the first and second review and those represented in this study (Table 2). This is because PAC participants can request that their submission not be made public, and this study used only publically-available submissions.

---

28 This was confirmed in email correspondence with the PAC (Appendix A)
Table 2: Comparison of the submissions received by the PAC and those used in this study

<table>
<thead>
<tr>
<th>Submission Type</th>
<th>Received by the PAC</th>
<th>Represented in this study</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written</td>
<td>1877</td>
<td>1857</td>
</tr>
<tr>
<td>Verbal</td>
<td>72</td>
<td>46</td>
</tr>
</tbody>
</table>

4.3.2 NVIVO Analysis

Purpose: Code all of the available submissions regarding the SEDP according to dominant themes.

The available SEDP submissions were coded into dominant themes using NVIVO. 1,893 of these submissions were coded using NVIVO, while 80 were coded by hand. Of these 80, 21 could not be read in NVIVO and 59 were handwritten slips submitted. All 56 of the verbal submissions had to be converted from pdf format in order to be readable in NVIVO, a process which caused negligible errors in some sources.

The coding themes were established during the initial excel analysis. The coding themes, associated nodes and criteria are outlined below (Table 3).
Table 3: NVIVO themes, nodes and criteria

<table>
<thead>
<tr>
<th>Theme</th>
<th>NVIVO Node</th>
<th>Criteria of Inclusion Coded content expresses:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotion</td>
<td>Environmental antagonism distrust</td>
<td>antagonistic attitude or distrust towards environmental opposition</td>
</tr>
<tr>
<td></td>
<td>Extreme</td>
<td>an extreme idea out of line with the tone and content of other submissions</td>
</tr>
<tr>
<td>Framing</td>
<td>Objection unless changed/ Either Or</td>
<td>objection based on aspects of the current SEDP, but not an objection to the project altogether</td>
</tr>
<tr>
<td></td>
<td>Pro-forma support</td>
<td>template content used by 5 or more people in support of approval</td>
</tr>
<tr>
<td></td>
<td>Pro-forma opposition</td>
<td>template content used by 5 or more people in opposition of approval</td>
</tr>
<tr>
<td>Place</td>
<td>Cumulative social and economic impacts</td>
<td>that recent mine closures in the region make SEDP approval more important</td>
</tr>
<tr>
<td></td>
<td>Viability of town</td>
<td>that Lithgow will not be a viable township and region without the SEDP</td>
</tr>
<tr>
<td></td>
<td>Temporal Awareness</td>
<td>awareness of timescale of coal extraction as main industry</td>
</tr>
<tr>
<td></td>
<td>Identity</td>
<td>that coalmining is central to the identity of Lithgow itself</td>
</tr>
<tr>
<td>Community</td>
<td>Role of local environmental groups</td>
<td>Role and or value of local environmental groups</td>
</tr>
<tr>
<td></td>
<td>Scale (regionality)</td>
<td>that geographic proximity is a measure of opinion legitimacy</td>
</tr>
<tr>
<td></td>
<td>Environmental is important</td>
<td>a high degree of value for the environment of Lithgow</td>
</tr>
</tbody>
</table>

4.4 Semi-structured Interviews

Interview participants were identified through their participation in the public hearings held in Lithgow for either the first and second PAC, with the majority of participants giving verbal presentations to the hearing on behalf of an organisation. Individuals were contacted via their representative organisation’s email or telephone number. As both ROs are concerned with community participation in environmental decision-making, this selection process ensured that the stakeholders identified for interviews were actively involved in the regulatory process associated with the SEDP.
Stakeholders were separated into two categories – direct and indirect - based on their proximity and involvement with the SEDP. Direct stakeholders were those impacted directly as a result of the SEDP outcome, and strongly contribute to RO1. Indirect stakeholders were neither directly impacted by the SEDP outcome and were in a position to comment on the NSW planning process more generally, and strongly contribute to RO2. The stakeholder groups associated with each RO are listed in Table 4.

**Table 4: Identified ‘direct’ and ‘indirect’ stakeholder groups**

| DIRECT STAKEHOLDERS → RO1 | • Lithgow mining representatives  
| • Lithgow and regional environment group members  
| • Lithgow politicians |
| INDIRECT STAKEHOLDERS → RO2 | • State politicians  
| • Legal counsel  
| • National Environmental Org. |

16 semi-structured interviews were conducted (Table 5), ranging from 84 minutes to 32 minutes in duration. This organised yet flexible interview format (Hay, 2002) allowed the researcher to guide the interview content whilst also providing enough scope for participants to give in-depth responses where required.
### Table 5: Interview participant and type

<table>
<thead>
<tr>
<th>No.</th>
<th>Identifier</th>
<th>Direct Stakeholder Role</th>
<th>Interview Location</th>
<th>Interview Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DS1</td>
<td>Senior Councillor at Lithgow City Council</td>
<td>Lithgow</td>
<td>In person</td>
</tr>
<tr>
<td>2</td>
<td>DS2</td>
<td>Senior Official at Lithgow City Council</td>
<td>Lithgow</td>
<td>In person</td>
</tr>
<tr>
<td>3</td>
<td>DS3</td>
<td>Member of environmental group</td>
<td>Lithgow</td>
<td>In person</td>
</tr>
<tr>
<td>4</td>
<td>DS4</td>
<td>Member of environmental group</td>
<td>Lithgow</td>
<td>In person</td>
</tr>
<tr>
<td>5</td>
<td>DS5</td>
<td>Regional research academic</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>6</td>
<td>DS6</td>
<td>Member of environmental group</td>
<td>Sydney</td>
<td>Skype</td>
</tr>
<tr>
<td>7</td>
<td>DS7</td>
<td>Member of environmental group</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>8</td>
<td>DS8</td>
<td>Member of environmental group</td>
<td>Sydney</td>
<td>In person</td>
</tr>
<tr>
<td>9</td>
<td>DS9</td>
<td>Member of environmental group</td>
<td>Lithgow</td>
<td>Telephone</td>
</tr>
<tr>
<td>10</td>
<td>DS10</td>
<td>Official at Blue Mountains Council</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>11</td>
<td>DS11</td>
<td>Mining Representative</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Identifier</th>
<th>Indirect Stakeholder Role</th>
<th>Interview Location</th>
<th>Interview Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Minister Rob Stokes</td>
<td>NSW Minister for Planning and the Environment</td>
<td>Sydney</td>
<td>In person</td>
</tr>
<tr>
<td>13</td>
<td>IS13</td>
<td>Senior Legal Council</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>14</td>
<td>IS14</td>
<td>National Environmental</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>15</td>
<td>IS15</td>
<td>National Environmental</td>
<td>Sydney</td>
<td>Telephone</td>
</tr>
<tr>
<td>16</td>
<td>IS16</td>
<td>Senior Legal Council</td>
<td>Sydney</td>
<td>In person</td>
</tr>
</tbody>
</table>
Initial contact with stakeholders was by email, including full disclosure of the project outline as required by University of Sydney ethics approval (University of Sydney, 2013). Interviews with consenting stakeholders were conducted face-to-face or by telephone, as the location and schedule of the participant required, once the participant had signed the project consent form. Each interview was audio recorded on two devices (mobile phone and laptop recording software), and transcribed by the researcher. All participants were de-identified in this study except for Minister Stokes. Minister Stokes consented to be identified in the study, and, considering his significance within the NSW planning system, he was identified by name.

4.4.1 Direct Stakeholder Interviews

The purpose of interviews with direct stakeholders was to gain an understanding of how that individual interacted with aspects of decision-making in the SEDP, and what their experience of participation was. Interviews were structured around shared interview themes (Table 6).

Table 6: Interview guide for direct stakeholders

<table>
<thead>
<tr>
<th>THEME</th>
<th>QUESTIONS RELATING TO</th>
</tr>
</thead>
</table>
| Environmental | • Subsidence-related threats to TTPSS  
|              |   • Mine Water Discharge                                                            |
|              |   • Validity of environmental opposition to project                                  |
|              |   • Quality of current environmental protection and outcomes in the region           |
|              |   • World heritage impact                                                           |
| Procedural   | • Public hearings held for PAC                                                      |
|              | • Submissions                                                                       |
|              | • Satisfaction with decision-making                                                 |
|              | • Satisfaction with participation opportunities under the PAC                        |
|              | • LEC court case                                                                    |
|              | • PAC process (triple bottom line, time, quality of decision)                       |
| Social       | • Experience and opinion of the opposing perspective                                |
|              | • Local antagonism between groups                                                   |
|              | • Local media coverage                                                              |
|              | • Personal impacts related to the SEDP                                               |
|              | • Role of local environmental groups                                                |
4.4.2 Indirect Stakeholder interviews

The purpose of interviews with indirect stakeholders in the SEDP was to establish their understanding of the broader framework of decision-making in NSW, and were structured around common themes (Table 7).

<table>
<thead>
<tr>
<th>THEME</th>
<th>QUESTIONS RELATING TO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental</td>
<td>• Validity of environmental opposition to project</td>
</tr>
<tr>
<td></td>
<td>• Quality of current environmental protection and outcomes in the NSW</td>
</tr>
<tr>
<td>Procedural</td>
<td>• Role of local environmental groups</td>
</tr>
<tr>
<td></td>
<td>• Effectiveness of environmental protection measures in NSW regarding mining developments</td>
</tr>
<tr>
<td></td>
<td>• Nature of relationship between mining and environmental agendas in NSW</td>
</tr>
<tr>
<td>Legal</td>
<td>• Interaction of NSW and Federal environmental laws</td>
</tr>
<tr>
<td></td>
<td>• Triple bottom line – weight of considerations</td>
</tr>
</tbody>
</table>

4.5 Limitations

On the October 14, 4Nature announced that they were launching an case in the NSW Court of Appeal against the LEC’s ruling in support of the PAC decision regarding the SEDP. As such, any analysis included in this thesis is subject to being influenced as some point in the near future by the continuation of decision-making processes. Despite this, the issues raised within this thesis are pertinent to how the SEDP arrived at this level of legislation in the first place, and any further litigation can be seen to be an emphasis of the timeliness of this analysis and its relevance to the contemporary field of legal geography.

4.6 Positionality

This research process aimed to reflect the fluidity and complexity of researcher positionality at all times, using the “the self-conscious analytical scrutiny of the self as
a researcher” (England, 1994, p. 89) to productively document and reflect these questions of positionality through the research method.

In preparing for the fieldwork portion of this project, several issues were identified as significant to my own positionality, as I grew up in the case study region - Lithgow - and have familial connections with the mining industry there. These issues included “invisible positioning” (Choi, 2006, p. 445), and the selectivity dilemma (Keith, 1992; Mullings, 1999; Sultana, 2007), based on the understanding that familiarity could potentially influence local assumptions and participation rates. The greatest concern was that my own proximity to this topic and the people involved in the case study would impact my ability to be critical (Hodkinson, 2005) and impartial (Choi, 2006).

With this in mind, the research plan was designed to minimise the impact of undesirable researcher positionality on the quality and legitimacy of the research. To limit the bias of the influence of familiarity, direct stakeholder participants were identified exclusively according to their previous public involvement with a SEDP PAC. Participation was restricted to organisation representative publically listed on the PAC website as having spoken at a PAC hearing. This imposed clear recruitment guidelines, and provided official channels through which to contact all participants through public, organisational email addresses or phone numbers. In addition, all initial contact included the Participation Information Statement and Participant Consent Form as required to under the ethics approval this study received from Sydney University (Sydney, 2013).

My understanding of researcher positionality was challenged by the process of fieldwork. In conducting research in my hometown, I grew to understand that the “epistemological implications” of working within a cultural and physical setting I claim as my own (Choi, 2006,
p. 436). It was clear that my connection with Lithgow influenced how I engaged with participants, and in how and why they chose to engage with me. In one meeting, it was clear that I had been granted the interview because I was local, as evidenced by the participant’s questions regarding my family connections at the start of the interview. These types of comments on my connection to the area were not uncommon during interviews, and several times participants or local people on hearing about my project offered to connect me to other participants, which I refused as it did not comply with the research design. This acknowledgement that my role as researcher was playing a part in influencing participation in the study led me to experience a measure of the “insider/outsider” dilemma (Hodkinson, 2005). In my growing awareness of the complexity and instability of my own position in relation to participants, I recognised both the opportunity of being considered an insider, as well the increased need to be both “cautious and reflexive” in my research approach (Hodkinson, 2005, p. 131). This leads me to agree with Hodkinson (2005), Choi (2006) and Sultana (2007) that that binaries such as local/non-local and insider/outsider problematically mask complex dynamics, because competing elements of researcher identity and understanding of participant information fluctuate as a result of context and audience.

My experience of fieldwork and analysis has led to me agree with these reflexive scholars that researcher proximity to subject matter, when methodologically addressed to minimise error and bias, can be an advantage to the depth and insight of the research. Conducting research in my hometown led to avenues of research and insights that a different researcher might miss, because they were generated by candid conversation with family and friends as well as academic immersion in the study. In addition, I believe I was afforded some levels of access to local participants based solely on my own local status. Rigorously observing the study’s Ethics Protocol, as well as taking field notes, conducting formal interviews, and applying field
data and observations to a theoretical framework contributed to a critical distance between me as a researcher and the research subject itself.

4.7 Summary
This methodology establishes a cohesive research approach that imbued the results of this fieldwork with a high level of “credibility, dependability and confirmability” (Hay, 2000, p. 4). The following chapter presents and contextualises the results of this fieldwork as they apply to the ROs of this study.
CHAPTER FIVE: SPACE AND THE BALANCE OF LAW IN THE SEDP

Law is often presented as a dispassionate application of generic rules to circumstance (Bennett & Layard, 2015) in which space does not matter (Bartel et al., 2013). This assumption that law transcends the particular economic, environmental, social, political contexts of place is challenged through legal geography’s critical engagement with interrelations between law, place, space and time (Blomley, 2008). Examining the particularities of the social and environmental landscapes to which law is applied aids an understanding of how “law happens” and what it means when it does (Braverman et al., 2014, p. 1).

This chapter will proceed in two sections. The first section will present the findings of PAC submission analysis and semi-structured interviews with direct and indirect stakeholders involved in the SEDP decision-making process. In doing so it will address RO1 by establishing the context and substantive impacts of community participation regarding the SEDP, and reflect of the procedural engagement of the PAC with the claims of different communities. The second section will address RO2 by examining the findings of courtroom observation of 4Nature’s judicial review case in the NSW Land and Environment Court, and use these proceedings to inform an evaluation of the effectiveness of the environmental decision-making framework at work in NSW.

5.1 The substantive impacts of the PAC

In order to evaluate the effectiveness of the PAC mechanism in facilitating equitable community participation, the substantive and procedural impacts of the decision-making process on the community stakeholders must examined. This section will do this by evaluating
the processes of community participation regarding the SEDP from the perspective of the different communities involved.

5.1.1 Community expectations as a foundation for decision-making

Differences in how communities understood and interacted with each had implications for how they interacted with the PAC, and how the SEDP decision contributed to local antagonism. The significance of the SEDP site was established in Chapter two, through both the economic and social value of the site to the Lithgow community, and through the ecological importance and sensitivity (REF) of its natural features. An acknowledgement of the capacity of the PAC decision to reflect both of these aspects of the site was a major point of difference between opponents and advocates of the SEDP. Written and verbal PAC submission content reflects two distinct understandings of the SEDP decision-making process: jobs and environment, and jobs or environment. These understandings each exhibit an embedded expectation of the role and purpose of the PAC process, and significantly impacted how participants viewed and interacted with ‘opposing’ stakeholders, and how they mobilised to participate and engage with the PAC.

A jobs and environment frame was reflected in submissions from opponents of the SEDP, with content stating that while they opposed this particular proposal for the Springvale development only because it did not, in their view, adequately ensure that EECs and drinking water quality would be protected. While some opposing submissions were against the entire proposal on environmental grounds\textsuperscript{30}, the majority encouraged Springvale development.

\textsuperscript{30} 7/749 (1%)
approval via an amended proposal. This can be seen in the pro forma submission content used by many\textsuperscript{31} opponents of the SEDP. The follow examples from two extensively used pro forma responses demonstrate this:

\begin{quote}
I further request that if the Commission recommends approval of this proposal it must also recommend...

The new proposal must replicate this arrangement if it is not to significantly lower environmental outcomes for our drinking water supplies.
\end{quote}

The Lithgow Environment Group, supported by the Blue Mountains Conservation Society, the Colo Committee, and the Colong Foundation, a verbal submission at the first PAC, outlining a potential compromise between the environmental and economic interests of the SEDP site. This took the form of a ‘2% compromise’.

\begin{quote}
"Upland swamps cover only 2\% of Newnes Plateau, and occur nowhere else in the world. They cannot be remediated, mine subsidence is irreversible. All we’re asking of Centennial is to avoid directly undermining just 2\% of Newnes Plateau to protect these swamps of National Environmental Significance." – Lithgow Environment Group
\end{quote}

Reflections of this compromise were largely absent in submissions made by supporters of the SEDP. Where it was mentioned, it was generally in dismissive terms. The only verbal submission to acknowledge the 2\% compromise dismissed it as analogous to “being half pregnant”.

\begin{quote}
Activists say they are not against Mining...They often refer to “we only want 2\% not mined”. That is as good as opposing Springvale in total. By doing this it would be an uneconomical option. Centennial have already narrowed the width of the Longwall and increased the chain pillars to prevent any subsidence impacts. This is at a significant cost to the life of the mine and royalties to the people of NSW. The 2\% statement is just like being "Half Pregnant". It’s either one or the other. - BR
\end{quote}

\textsuperscript{31} Details of pro forma use to follow
The economic viability of the 2% compromise was slated as an obvious barrier to implementation, yet no feasibility studies were submitted by Centennial to procedurally address the option. Further, the responses of direct stakeholders suggest that this approach was dismissed primarily because of the high levels of distrust supporters of the SEDP exhibited regarding environmental participation, rather than a direct reflection of the viability of their input.

*High level environmentalists. That are trying to stop coalmining. I’ve learnt that we have to preserve things for the future. But the other side of the coin is – do you want Lithgow to close down?* – DS1

*I would say that that [2% compromise] is definitely a smokescreen. They have a philosophical problem with coalmining and a philosophical problem with power generation from coal and that’s their focus. Plain and simple.* - DS2

*So I take that kind of comment [2% compromise] as being reasonable if it’s being truthful, but I’m doubting - certainly the Blue Mountains and the Sydney based ones after hearing that.* – DS11

These statements also reflect that environmental opposition to the SEDP was understood as a threat to the coalmining industry and, due to the integral role coalmining plays to both the identity and economy of Lithgow, to Lithgow itself.

The *jobs or environment* frame was reflected in submissions that pre-empted binary outcomes from the PAC, and positioned the values associated with local employment and environmental protection as both competing and exclusionary.

*We never had any problems in the past as everyone got on with each other. It is only now that some people think a swamp is more important than a Family having food*
So we say to the ‘Objectors’ when you turn on your lights or charge up your phones and laptops to spread the word all while you are sitting in your air conditioned office also take a look around at the many other modern conveniences that we as a society expect to have at hand and think long and hard about the decision you make that impact our communities future. - DW

These written submission excerpts demonstrate a common either/or framing of the SEDP PAC decision in which such dichotomies - a swamp or a family, electricity or the right to question how it is generated – were understood as the choice before the PAC. 13/43 (30%) verbal presentations contained content reinforcing an idea that employment and environmental protection were incompatible.

Direct stakeholders expressed frustration that the pervasive jobs or environment understanding of the SEDP misrepresented their participation input as both anti-mine, and anti-Lithgow.

…it was such a huge beat-up, because no one was trying to shut down the mine...All we were asking for was a little bit of compromise but they weren’t willing to do that. – DS3

I don’t want to stop the mine, just treat it [the water]...– DS5

Which is what the environment groups were actually suggesting. Not that they not proceed at all, but that they proceed responsibly and protect the swamps. – DS6

So we are saying that we agree that you can mine underneath, but you’ve got to protect the land above, and the environmental aspects above. – DS7

32 Participant initials are used throughout to distinguish written and verbal submissions.
This information suggests that there was a fundamental difference in how opponents and supporters of the mine understood the purpose of the participation processes, and the nature of the PACs decision. This context provides a necessary starting point in understanding why opponents and supporters of the SEDP reacted the way they did, and how this influenced their interaction with the PAC. It is inevitable that land-use change will trigger contrasting, and often highly emotional, reactions from different segments of the community (Ångman et al., 2016). It is for this reason that forums for constructive debate and the presentation of these different perspectives are considered an essential component of contemporary environmental decision-making processes (Finanzio, 2015). The following section will build upon this contextual foundation of how different communities understood the SEDP decision in order to evaluate the role the PAC played in facilitating such a forum. It will do so by examining how community expectations and understanding of each other and the PAC decision is reflected in how they used scalar positioning to mobilise their claims.

5.1.2 The construction of ‘local’

Legal geography analysis is heavily dominated by case study analysis that focuses on scalar interactions due to the utility of this method in revealing the, often unrecognised, power dynamics that underpin environmental decision-making. This analysis will continue the analytical tradition of contemporary scholars such as Jessup (2014), Bartel et al. (2014) and...
Gillespie (2012), but will expand its relevance to the SEDP case study by integrating the expanded notion of the justice community embedded in Schlosberg’s (2007) concept of EJ.

A pervasive argument employed in the SEDP decision-making process was that the majority of opposing submissions to the project came from participants outside the Lithgow region, and were thus less credible than those of participants from the Lithgow region. Written\textsuperscript{33} and verbal submissions\textsuperscript{34} presented non-local input as inherently less valuable than that of local residents, classifying non-local participants as “outsiders”, “rent-a-crowd”, “armchair activists” and “bandwagon” jumpers. Direct stakeholder interviews reinforced this link between spatial proximity and the legitimacy of participant input.

\begin{quote}
I believe that you should not be able to have a say unless you are a rate payer in the area affected. And I feel absolutely strongly about that. – DS1
\end{quote}

\begin{quote}
[Environmental opposition will] garner support in the streets of Newtown or Balmain because the people there don’t know any better about the local context. – DS2
\end{quote}

\begin{quote}
But he’d come from Palm Beach to be there [at the PAC hearing], you know, hadn’t actually been in the swamp area and was making a whole lot of claims. – DS11
\end{quote}

The argument that the spatial proximity of a participant increases the legitimacy of their participation was countered by both local and non-local opponents of the mine, who

\textsuperscript{33} The total number of verbal submissions for or against SEDP was 43 and the total number of written original submissions was 794. To facilitate an understanding of fieldwork analysis, footnotes are used to contextualize the data representing it numerically. Here, 43/794 (6%) written submissions explicitly stated that the input of non-locals was less valuable than that of locals.

\textsuperscript{34} 11/43 (26%)
reinforced the legitimacy of their participation through the “legal thickness” (Bennett & Layard, 2015, p. 4) of the SEDP site.

That’s what democracy is, that this is the heritage of all Australians – present and future. Therefore, all Australians have equal rights to make comment on it.– DS6

The THPSS are a nationally listed endangered ecological community, of national significance...there are issues there that extend beyond local community perspectives. – DS9

National heritage listed values are being impacted, world heritage, internationally significant values are being protected, the public interest in public land is being impacted. – DS8

These responses highlight the way in which environmental opposition used the multiscalar legal protection of the SEDP site to extend the boundaries of the community participation.

SEDP supporters created and perpetuated a narrative in which proximity to the SEDP site dictated the legitimacy of participation, and the weight of input. Local opposition was disregarded due to its minority status, and non-local input was characterised as less legitimate than that of locals, effectively undermining all opposition. Overall submission trends (Table 8) reveal that the conception of support for the project as the general consensus is supported only if opinion is represented at the local scale, with opposition only slightly lower than support for the project.
Table 8: Support and opposition for the SEDP expressed in PAC submissions (Merit and Determining PAC submissions combined)

<table>
<thead>
<tr>
<th>Submission Type</th>
<th>Support</th>
<th>Oppose</th>
<th>Misc</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verbal</td>
<td>33</td>
<td>10</td>
<td>3</td>
<td>46</td>
</tr>
<tr>
<td>Written</td>
<td>837</td>
<td>1,013</td>
<td>7</td>
<td>1857</td>
</tr>
<tr>
<td>Petition²</td>
<td>320</td>
<td>-</td>
<td>-</td>
<td>320</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1190</td>
<td>1023</td>
<td>10</td>
<td>2223</td>
</tr>
<tr>
<td><strong>Overall Percentage</strong></td>
<td>53.53%</td>
<td>46.02%</td>
<td>0.45%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

The political persuasiveness of local dominance reflected in the comments of indirect stakeholders.

*Start with the notion that they [local residents] obviously have a more direct interest and their views are entitled to greater weight than those who don’t.* – IS16

*I do have some sympathy for the idea that those that bear the direct benefits or consequences of an application have a particularly strong right to be heard.*
- Minister Rob Stokes

*...as a general principle, the focus of a consultation...should be listening to people who are directly affected in some way by what’s being proposed ...I would say that the views of the locals are the ones that are particularly acute.* - Minister Rob Stokes

These responses reinforce that the weighting of input should correlate to the level of impact the decision will have on local interests. However, this recognition of ‘local’ interests was not extended to non-human communities.

*To suggest that you could close a coalmine down because of a butterfly – there are many people out there that think that that’s just way over the top.* – DS1
This statement conveys an embedded hierarchy in conceptions of the ‘local’, in which impacts are evaluated according to the spatial dominance of particular groups rather than according to spatial proximity. A potential impact of the SEDP is that subsidence will damage the on-site THPSS communities, which represent 12-15% of the total population (OEH, 2011) in existence and are at high risk of extinction (Kohlhagen et al., 2013). In this we can see that the scope of the threat posed by the PAC decision to the local communities involved – Lithgow residents, and the EECs – was not equal. IS13’s comment highlights how environmental law uses that scope of impacts to challenges anthropocentric constructions of ‘local’.

*Who is entitled in this community, at this point in time to say, so what if that goes extinct? We have international obligations to try and reverse the cycle of biodiversity loss.* – IS13

Yet law is also inherently aspatial, existing only in theory until it is applied in space (Delaney, 2010a). As Bartel et al. (2013) remind us, law often (and problematically) operates as if this isn’t the case, discounting the influence of spatial context on legal outcomes. The comment of Minister Stokes highlight that who is recognised as ‘local’ has political implications for how threats to different communities are prioritised.

*In politics, all decisions are local. Locals may passionately care about a particular development but a small number of people might have a passionate view. At a larger scale, a lot more people might have a more generalised view. So the question of scale is not just about the number of people affected but the degree to which they care.* – Minister Stokes

The political persuasiveness of local interest as exclusively human interest reinforces Bulkeley’s (2005) rejection of constructions of nested scalar power in which the local is subordinate to the “higher” scales. All communities in the SEDP based participation legitimacy
on the understanding that, as Minister Stokes put it, “those that bear the direct benefits or consequences of an application have a particularly strong right to be heard”. This echoes the foundational purpose of community participation to provide the community with “a voice in policy choices” (Bishop & Davis, 2002, p. 14), and the foundational purpose of EJ as a mobilising strategy to ensure these voices are reflected in actual environmental outcomes. Scalar analysis reveals that the difference in SEDP expectations was not a result of clashing local and non-local interests, but rather a contestation over who (or what) was recognised as representing local interests. The construction of ‘local’ interest in this case highlights that “law is both felt and made (at least in part) locally” (Bennett & Layard, 2015, p. 3), weakening the law’s ability to react to and account for the co-opting influence of place in decision-making processes.

In the SEDP, the ‘new governance’ mechanism (Gunningham, 2009b) of holding public meetings in-situ demonstrates how procedural mechanisms worked to exclude the input of opponents of the SEDP. Both PAC hearings were held during work hours on weekdays and acted as a participation barrier, not only for non-Lithgow residents, but for Lithgow residents working office hours. The second meeting was held the day after both the 12AA amendment was made and 230 Springvale employees were stood down. The choice of time, date, and location greatly influenced the likelihood that shift-working miners, and those stood down, could attend, whilst decreasing the likelihood that non-miner Lithgow residents and non-resident participants could attend. Electronic submission was indeed available to all participants and did not place any spatial requirements on participation. However, written and verbal participation are significantly different, and speak to the ‘public’ nature of participation. Public hearings are important forums in the decision-making process, both as a
form of democratic stakeholder recognition (Finanzio, 2015), and strategically, as face-to-face communication tends to be more influential than written accounts (Arnott, 1998). The argument here is not that the meeting should have been held elsewhere, or that SEDP supporters should have been in any way discouraged from attending. Rather, that all interested stakeholders should, within the bounds of the practicable, have been provided with an equal opportunity to attend and participate in public hearings. Public hearings are “invited spaces” in which power hierarchies are embedded (Cornwall, 2008, p. 275). Regardless of intention, the choice of timing and venue for the SEDP PAC hearings can be seen to exclude a significant proportion of potential participants, many of which opposed the SEDP. As Minister Stokes’ comment reflects, the political dominance of the context of place over the aspatiality of international law is an influential factor is all decision-making. Physical barriers to participation act to exacerbate this further.

5.1.3 Differences in how communities mobilised their justice claims

The threats posed by the PAC’s decision to the interests of SEDP opponents and supporters meant that regardless of the PAC decision, it is likely that some would have found it ‘unjust’. The below results examine submission trends between pro forma and original (non-pro forma) content use between groups to examine how different communities mobilised their justice claims.

While pro forma responses were widely used by participants both opposing and supporting the SEDP, far more pro formas were submitted in opposition than support of the extension proposal (Figure 8).
The content of these pro forma responses corresponded directly to the respective justice claims regarding the SEDP (Figure 9).

The submissions trends demonstrated that each community has a distinct embedded “strategy for action” Čapek (1993, p. 7) to counter the likelihood of a threatening decision.
outcome. SEDP advocates mobilised around the political utility of ‘local’ impacts, and how 
this was countered by environmental opponents who emphasised the site’s “legal thickness” 
(Bennett & Layard, 2015, p. 4).

An analysis of the most frequent content in original submissions demonstrate that the context 
of the SEDP decision was highly significant on how participants experienced the decision-
making process. Content expressing a fear for the long-term viability of Lithgow or an 
either/or understanding of the PAC decision dominated written and verbal submissions, 
respectively. Antagonistic content was the most common type of content overall, with 
submissions containing antagonistic content often having multiple incidences of antagonism 
(Table 9 and Table 10).
Table 9: Coded content in written original PAC submissions

Written Submissions to the PAC

- Viability of Lithgow
- Environmental Antagonism
- Scale (regionality)
- Identity
- Environment valued in Lithgow
- Cumulative social and economic
- Objection unless changed
- Extreme

Number of submissions coded in NVIVO node
Frequency

Table 10: Coded content in verbal PAC submission content

Verbal Submissions to the PAC

- Either Or
- Antagonism
- Viability of Lithgow
- Identity
- Scale
- Cumulative social and environmental
- Environment valued in Lithgow
- Temporal awareness
- Role of Environmental groups

Number of submissions coded in NVIVO node
Frequency
The most frequent theme in written submissions was an expression of fear regarding Lithgow’s viability if the SEDP was not approved, an issue also expressed in 15/33 (45%) of the verbal presentations over the PAC hearings held in Lithgow. This aspect of participation is inextricably linked to factors of place external to the specifics of the SEDP. For example, many submissions highlighted the increased significance of the SEDP’s approval in Lithgow’s economic and social security due to the recent closure of several other prominent regional mines.\(^{35}\) This fear was exacerbated through the extension of the decision-making process via the Mining SEPP amendment, and as a result of the impact of the Springvale stand-down. Lithgow’s industrial history was used to reinforce the link between mining with the identity of the community\(^ {36}\), with versions of *Lithgow has always been a mining town* permeating written support of the SEDP. This was also evident in participant submissions in which participants defined themselves through their relationship with mining e.g. as the wife/daughter/mother of a miner, the grandson of a miner, as a 5\(^{\text{th}}\) generation miner. As Ey and Sherval (2016) note, the intensity of coalmining as an aspect of community and personal identity in these types of communities heightens reactions to regulatory action that impact this ‘minescape’. Opposing submissions were highly reactive to the perceived threat implicit in a *jobs or environment* understanding of the PAC’s decision. This reinforces the argument that “superficial” (Ey & Sherval, 2016, p. 179) treatment of the impact, and implicit threat, that regulatory mechanisms represent to the place and identity of these communities is a disservice to both communities and the outcomes of regulation. The following section will demonstrate how the contextual interplay between community groups, and the underlying

\(^{35}\) Coded as ‘cumulative social and economic’ in Table 10 & 11

\(^{36}\) Coded as ‘identity’ in Table 10 & 12
distrust for environmental input in the PAC decision transformed public hearings from neutral ground to a site of antagonism.

5.1.4 Participation as a social threat

Both written and verbal submissions contained a high degree of antagonism. Whilst the expression of antagonism was by no means restricted to use by supporters of the SEDP, its use against environmental opposition was notable both in its frequency and intensity. Table 10 presents examples of coded antagonism directed at both the identity of environmental groups as well as their environmental claims regarding the SEDP.
Table 11: Examples of antagonism directed towards environmental groups and their claims in written and verbal PAC submissions

<table>
<thead>
<tr>
<th>Characterisations of Environmental Groups</th>
<th>Characterisations of Environmental Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggressive / Malicious / self-appointed group of dogmatic and arrogant elitists</td>
<td>Narrow interests</td>
</tr>
<tr>
<td>Radicals can’t abide by the umpire’s decision</td>
<td>wild and extravagant statements</td>
</tr>
<tr>
<td>...clogging social media, delaying government decisions then more than likely walking down to Centrelink for their welfare payments.</td>
<td>plainly wrong</td>
</tr>
<tr>
<td></td>
<td>sensationalist</td>
</tr>
<tr>
<td></td>
<td>crap</td>
</tr>
<tr>
<td></td>
<td>unethical propaganda</td>
</tr>
<tr>
<td></td>
<td>scare mongering</td>
</tr>
<tr>
<td></td>
<td>scare tactics</td>
</tr>
<tr>
<td></td>
<td>misinformation</td>
</tr>
<tr>
<td></td>
<td>scare campaign</td>
</tr>
<tr>
<td>extremist</td>
<td></td>
</tr>
<tr>
<td>hypocrites</td>
<td></td>
</tr>
<tr>
<td>regressive ideologists</td>
<td></td>
</tr>
<tr>
<td>dole bludging hippies</td>
<td></td>
</tr>
<tr>
<td>environmental terrorist</td>
<td></td>
</tr>
<tr>
<td>a bunch of liars</td>
<td></td>
</tr>
</tbody>
</table>

This antagonism was evident in the PAC meetings, and as a result, direct stakeholder interviews revealed that the experience of participation was thus fundamentally different for SEDP opponents than it was for supporters.

*That was...hit you like a brick wall when you walked in, death stares from all the miners. – DS3*

*I went to both of the PAC meetings and I regard the first one as one of the most unpleasant human interactions of my adult life...I actually worried about my physical safety.- DS5*
In Lithgow I thought we were going to have a riot... you could have cut the tension with a knife at that particular hearing... It was the most aggressive I've ever seen. – DS6

...one of the tensest and most aggressive public meetings that I've been to... very intense, very heightened emotional, aggressive atmosphere. It was very intense. – DS7

you’ve got to get up in front of 200 angry miners at the PAC, and some of the locals did, it’s quite threatening – DS9

Supporters of the SEDP had a very different experience of these public PAC hearings.

The PAC hearings were a bit like a drama day, lots of drama and its quite stressful and people get very antagonistic about things... there is a great wall of china between the two [groups] – DS1

...there was probably some tension in the air. I thought fairly well that there was a reasonable amount of respect and listening to the other’s point of view without interjecting. I have heard from some of the environmental people that some of their side of the argument have felt intimidated on the way out, but I didn’t personally witness any of that. What I did witness personally was a level of listening, and respect to let the others have their say. – DS2

I think that the atmosphere was very positive for the people who were speaking for the application. But I think that the people who spoke against it were given cordiality – they weren’t being interrupted and they weren’t being booed. If someone sees the lack of applause at the end of a speech as being rude well you can’t help that. – DS11

These accounts of the physical act of participation highlight that the spatial setting and attendance of public PAC hearings was a significant aspect of not only who could participate, but of what the risks of doing so were for different participants. As discussed in section 5.1.2, the difficulties expressed by opponents regarding PAC meeting participation was magnified by the fact that the overwhelming majority of attendants were only SEDP supporters who understood opposition to the SEDP as a personal threat to their livelihoods and to Lithgow
itself. This reaction is a result of Lithgow’s context as a ‘minescape’ (Ey & Sherval, 2016), whose residents are uniquely vulnerable and reactive to planning developments that relate to that area.

5.2 The cohesiveness of the NSW decision-making system

As a mechanism of the participatory governance approach increasingly expected of environmental decision-making (Bulkeley & Mol, 2003), the PAC is presented as a way of increasing the independence, and thus the quality, of decisions (Williams, 2014). The PAC fits within a broader framework of environmental decision-making and environmental governance in the state, and thus necessarily engages with and answers to NSW environmental and planning law and process. This section will present the main arguments represented in the judicial review of the PAC SEDP approval in order to evaluate the interaction between the primary decision-makers in this case, the PAC and the LEC. This analysis will be used to reflect on the cohesiveness of the overall decision-making system used to facilitate and govern state significant developments in NSW.

5.2.1 Process rather than quality of outcome

The unsuccessful challenge of the PAC approval of the SEDP in the NSW Land and Environment Court[37] demonstrates how factors of legislation and legal recourse marginalized environmental outcomes in this case. The NSW Department of Planning and Environment’s amendment of Clause 12AA increased the procedural requirement for environmental

[37] 4nature Incorporated v Centennial Springvale Pty Ltd [2016] NSWLEC 121
consideration in decision-making, without attaching substantive procedural conditions. Procedurally, under the amended Mining SEPP, the decision-maker must give equal weight to the environmental, social and economic impacts of a development, however the decision-maker is not required to explicitly demonstrate the process through which they evaluate and consider these impacts. Thus the only means of gauging whether they have fulfilled their obligation is through the information they choose to provide in project reports, and through their decision. This highlights an embedded hierarchy that favours legal process over substantive outcomes, a characteristic that leads Preston (2013) and Herbert et al. (2013) to question the law as a vehicle for justice. The limited scope of the judicial review format, coupled with the ‘burden of proof’ dynamic, inhibited 4Nature’s ability to challenge the PAC decision. This was demonstrated through two failed contestations of the PAC’s approval of the SEDP, both of which were grounded of clarity as to why and how the PAC made their decision.

The first point of contention concerned the clarity and detail of the PAC’s justification for approving the SEDP. The PAC’s determination letter stated that they were “satisfied that the project’s benefits outweigh its potential impacts” and thus approved the project. 4Nature contended that the determination letter, in the absence of any other statement of reasons, provided only a “sparse and limited” justification of the PAC decision. The justification for this provided by the State was that the PAC “is required to give determination, not reasons for it”.

The second point of contention raised in the LEC was again due to the lack of clarity regarding the mandatory prohibition triggered by the SEDP site’s location within the Sydney Drinking Water Catchment (SDWC). As noted in section 2.2.4, Clause 10 of Section 2 of the SEPP (SDWC) places a statutory prohibition of any development in the SDWC that results in
anything other than a *neutral or beneficial effect* on water quality, or NorBE. According to 4Nature, there was no indication that the PAC had constructed or considered Clause 10 appropriately. The argument of the state was that it “doesn’t matter if it [the PAC] was right or wrong in the application of the NorBE test, as long as it was given “serious consideration”. The problem is that in court the legal burden of proof rests with 4Nature to prove the absence of “serious consideration” rather than on the state to provide such proof. This highlights Preston’s (2013) critique of the burden of proof in legal contestations concerning environmental damage as counterproductive to environmental protection. As the first test of the legislation protecting Sydney’s drinking water catchment, much of the LEC case centred around the lack of legislative clarity as to the correct application of NorBE. This legislative opacity, combined with the lack of transparency regarding the rational of their approval, provided the PAC with a significant amount of scope to apply the law as they saw fit, whilst simultaneously undermining the process of judicial review as an avenue of public recourse. 4Nature’s failed challenges in the Land and Environment Court reinforce Preston’s (2013) argument that environmental challenges are structurally disadvantaged in court proceedings, making this mechanism ill-suited to providing an equitable arena of contestation.

### 5.2.2 Judicial review as reinforcing binary environmental outcomes

The binary outcome of the SEDP judicial review perpetuated the understanding that environmental decision-making involved a choice between incompatible economic and environmental outcomes. The judicial review formal is inherently limited in the outcomes it can produce, and its use decreases the likelihood that the final decision will encompass “numerous notions of justice [within] a singular political project” (Schlosberg, 2007, p. 76). This was particularly significant in this case due to the pervasiveness of the *jobs or
environment approach taken by submissions supporting the SEDP. As evidenced by the 2% compromise’ approach, throughout the decision-making process environmental opponents of the SEDP sought a more nuanced outcome from the PAC via a jobs and environment outcome. The embedded win/lose outcome of the judicial review format restricted litigation efforts to two potential outcomes: complete project rejection, which very few environmental opponents sought, or complete decision reinforcement, in which environmental concerns were entirely disregarded. Rather than allowing 4Nature to “rescript” (Jepson, 2012, p. 614), the misrepresentation of opposition to this development, the narrow structure of the judicial review format perpetuated a binary outcome. Legal recourse failed to provide what was, as Table 8 demonstrates, significant public opposition to the project with a “a voice in policy choices” (Bishop & Davis, 2002, p. 14). The embedded appeal restrictions thus undermined the protection intended for the site through the mandatory obligation of Clause 10 of the SEPP (SDWC), as well as the efficacy of the community participation process to represent community concerns in state decisions.

5.2.3 The structural inconsistency of participatory governance in NSW

Justice, as a subjective concept, is in the eye of the beholder, and thus there may not exist a PAC decision that would have satisfied all participants, or all stakeholders, in the SEDP. However, as Low and Gleeson (1998) highlight, justice is not only a matter of outcome, but of process. To evaluate the effectiveness of the NSW environmental decision-making process in delivering positive environmental and social outcomes, we must examine its constituent parts, and how they interact with the public and with each other. In NSW, this means assessing the PAC with respect to both the political and legal frameworks it operates within.
The independence of the PAC is slated as a significant benefit to environmental governance in NSW due to the distance it creates from potential political influence and bias (Williams, 2014). However, this case demonstrates that this independence is accompanied by reduced accountability, acting as a significant limitation to good governance via public consent. Incumbent in political office is the requirement to justify policy decisions to a constituency. By removing this obligation within the decision-making process, the use of the PAC mechanism undermines the rights and responsibilities of the wider public to engage in democratic process. In addition, political decisions are capable, in many cases, of being appealed on merit. Again, the restriction to judicial review impedes the ability of the legal system to counteract this, leaving the PAC, as has been demonstrated in this case, relatively free to make decisions with no substantive strings attached. The decision-making process of the SEDP, including its judicial review in the LEC, demonstrates the way in which community participation through the PAC approach remains strongly bounded by state control. In public hearings, participants contribute information, but are unable to interact with the PAC, highlighting the one-sided nature of this participation. The ongoing dissatisfaction exhibited by environmental groups suggests dissatisfaction that their concerns were being heard and acted upon by the PAC, made worse by the lack of explicit justification for why they approved the SEDP with environmental conditions that arguably disregarded scientific advice. The very independence of the PAC restricted both legal and political recourse in this case, and, in doing so perpetuated the dissatisfaction of a significant proportion of those who interacted with the PAC to oppose the SEDP on environmental grounds. The outcome of the PAC process, and the ongoing litigation regarding their SEDP approval, suggests that environmental opposition to the project did not, and do not, experienced “respectful and unbiased” acknowledgement of their claims (Čapek, 1993, p. 8). The lack of political and legal agency engendered by the
PAC in communities who feel that their views are not being represented in environmental decision-making reflects the original and the enduring motivation of environmental justice analysis. This case study demonstrates that the potential benefit of independent decision-making bodies, such as the PAC, are effective only when they are embedded in a holistic governance approach in which the checks and balances that result from the interaction of legal and political obligations work to maintain public accountability for decisions.

The interaction of the PAC and the LEC in the decision-making process for the SEDP demonstrates Bennet and Layard’s (2015) point that it is not only the spatial blindness of the law that impedes its substantive efficacy, but more importantly the inconsistency of this blindness. The PAC is an example of a ‘new governance’ approach, which encourages and facilitates public engagement in state significant development decisions. However, the embedded limitation the appeal rights in PAC decisions suggests that community input is differently enabled throughout the regulatory system as whole. The judicial review format embedded in the PAC mechanism inhibits engagement with environmental governance. This, combined with the lack of decision-making transparency and the one-way interaction of community participation processes, challenges the substantive nature of the PAC as a means to engage with and reflect the interest of the public. This regulatory approach can be seen to “approaches spatiality selectively – sometimes ignoring it, while at other times embracing it” (Bennett & Layard, 2015, p. 418) by using a participatory approach to make decisions yet restricting public participation once the decision has been made. The ‘spatial awareness’ engendered by the PAC in the SEDP case was problematic to environmental outcomes, allowing, as it did, the co-option of process by dominant constructions of ‘local’.
Once the decision was made, the judicial review mechanism reinstated the laws spatial blindness, restricting environmental opposition to appeal it. Thus, in this case, the benefits of an increased consideration of local context through community participation contributed to regulatory failure.

Lane and Corbett (2005) highlight the inherent danger in reifying any particular type of knowledge in governance process as it leads these processes vulnerable to co-option. The regulatory flexibility required to achieve this is directly undermined with the laws requirement for rigidity and processes that can be codified into one-size-fits-all approaches. This case demonstrates that the weakness of legal environmental protection measures lie in the fundamental inability of the law to account for context. The strength of legal regulation lies in its specificity, as evidenced by the NorBE clause in the SEPP (SDWC). As a statutory prohibition, this clause has the power to over-rule the PAC’s decision regardless of context, demonstrating the strength of command and control legislation. However, the lack of specificity regarding the baseline conditions in which it is to be applied, or its contextual application, NorBE became vulnerable to interpretation. Considering that state significant developments, by definition, engage with strong co-opting influences, the regulatory vulnerability that arises when law does not explicitly account for its own application in the physical world impedes its capacity to deliver substantive environmental protection. As Bartel (2015) notes, privileging any particular type of knowledge irrespective of context is a precursor to regulatory failure, even if (perhaps particularly if) what is being reified is legal knowledge and process itself.
5.2.4 Whose is the responsibility for positive environmental and social outcomes?

For local groups in particular, the social cost of participation was made higher by this binary outcome, in which their options were silence, or a deeply unpopular local outcome (which they never sought). The enduring understanding of environmental input as both threatening and malicious is demonstrated in the response of DS2.

*Now, accept the umpire’s decision, and move on – why go through this process. Whilst I recognise there’s a legitimate right to take such an action, I think its mean spirited...*—DS2

The law was again used by environmental opponents of the SEDP to deflect this adversarial framing by shifting the focus onto the procedural framework.

*...they’re trying to get rid of the so-called green tape, which are in fact environmental laws that the community fought for for many decades, to try and protect heritage.* – DS6

*...all were doing is arguing the best case we can according to the existing rules. Because the PAC people can’t do anything other than apply the rules and all you can do is present the evidence in the context and seek a ruling* – DS8

The social burden borne by environmental groups demonstrated in this case raises the question - whose responsibility are good social and environmental outcomes? All interview participants recognised the value of local and regional volunteer environmental groups, acknowledging their role in environmental monitoring and quality. However, the impact on community cohesion is impacted when adversarial understandings of the PAC are perpetuated. Their experience throws the issue of social cost and burden of responsibility into sharp relief.
We’ve been harassed. We’ve been abused. We’re still being harassed... – DS4

It is quite challenging taking a public position in dissention to mining in a mining community...those who do it do so at significant personal cost...it’s like democracy, it’s an ongoing dialogue, vigilance, fight. It never stops. – DS9

I dearly love the place [Lithgow]. I think it’s a fantastic area and I feel really sorry that my name is mud locally. I’ve sided with some of the conservationists. – DS

These responses suggest that despite playing a valued role in environmental outcomes, Lithgow and regional environmental groups bear the biggest cost of participation. The input of indirect stakeholders suggests that the nature of the relationship between participant and process is a result of how responsibility is acknowledged.

Participation is not there the derail the process, and equally the process needs to be genuinely listening... it depends on the motives of those participating, as to whether it works or not... Rob Stokes

The relationships between different communities is to some extent not really relevant to the PAC.- Rob Stokes

Placing the burden of social and environmental outcomes on participants shifts the responsibility from the state’s application of the decision-making framework. This conflicting message that the motivation and method of participation lies at the heart of community participation success is contrasted by the belief that how different communities experience participation is not a relevant consideration to the PAC.
To think that this PAC forum, in certain circumstances, is any less controversial than two people fighting in court over access to their own child ... is just completely naive. And quite irresponsible. There is just no protections for the process or the community. – IS13

Conversely, placing the burden on the decision-making framework facilitates an acknowledgement of the inequitable distribution of risk embedded in participation mechanisms. The procedural expectation of decision-making, both from participants and from the state, has implications on how the burdens of participation are acknowledged, and on where the onus of blame is located when the outcome is unsatisfactory.

5.2.5 How does the legal framework engage with concepts of justice in the SEDP?

The rigidity of the law both served and impeded the justice claims of environmental groups throughout the SEDP. The “legal thickness” (Bennett & Layard, 2015, p. 4) of the site was, as the first section of this chapter demonstrated, the mobilising force behind opposition to the proposal and a legitimating force in the face of ‘local’ exclusion. Yet this analysis has also outlined the way in which the law failed to provide procedural recourse or a more nuanced outcome. This is understood to be a result of both the structural rigidity of the judicial review format and the lack of specificity in the procedural application of critical protections, such as NorBE, and the consideration of Key Threatening Process to federal and state listed EECs. In understanding participation as both a right and a responsibility (Summerville et al., 2008), the distribution of both the rights and the responsibilities between stakeholder groups must be evaluated.
Justice is a matter of process, and it is the mandate of legal geography to critically engage with this process by examining the substantive outcomes of legal enactments on both the participants that engage in it, and the non-human communities that are directly impacted by it. The substantive outcomes of the SEDP decision indicate that the majority of participants who interacted with the PAC had some form of negative experience as a result of participation. The social burden of participation was, as a result of local antagonism, experientially higher for local opponents of the SEDP than for other groups, a factor exacerbated by both informal and procedural means of exclusion. An equally high emotional burden was borne by Lithgow residents as a result of the perceived threat to their immediate livelihood, and to their town, a factor dependent of the ‘minescape’ context of this community. These social impacts served to divide the Lithgow community. However, justice is not a matter of being pleased or displeased with state decisions. It is a matter of equal recognition, acknowledgement, and consideration of the claims of different communities in the process of decision-making, and the equal dispersion of environmental benefits and threats. As such, justice is a measure of comparison, of how different communities experience the process and outcome of environmental governance in NSW. What is unarguable in this case is that the scale of threat posed by the SEDP to EEC health is greater than any social impacts of process. Justice is as intangible a construction as law, as scale. We need to constantly recognise that they are defined by those who use them, by those who recognise them, and that they are constantly being recreated and co-oped so that equitable acknowledgements of these threats and benefits are impeded.
5.3 Summary

According to Gillespie (2014), legal geography analysis provides an “alternative way of conceptualising human-environmental relationship”. This is essential in cases like the SEDP, where the environmental decision-making process engaged with the interests of two local communities with a dynamic procedural presence – the Lithgow community as an embodiment of a ‘minescape’ (Ey & Sherval, 2016), and the EECs of the SEDP site. Through this case, we can see that the way in which environmental governance processes recognise (and fail to recognise) communities and reflect their interests is a result of the structural capacity of the decision-making system to responsibly and responsively account for changing contexts of place.
CHAPTER SEVEN: CONCLUSION

This research has been an examination of both the presence and absence of balance in the SEDP decision-making process, underlining the need for broader understandings of the network interactions that constitute land-use decisions. The necessity for balance is evident in all decision-making interactions, including those of the state and the public, between competing interests, between the enactment of rights and responsibilities, and – most importantly, between the allocation of threats and benefits. Environmental governance is a system, and the complexity of the processes that constitute the decision-making framework are mirrored only by the range of factors that influence them. Gillespie (2015, p. 346) highlights the fundamental challenge of environmental governance as the “need to balance human usage and demand for the resources of the non-human world through laws and rules that restrict particular behaviours”. The claims of all groups involved in the SEDP land-use decision are valid and important, and deserve to be facilitated and reflected in both social and environmental outcomes. In this, it is not a matter of privileging particular threats, but in accounting for them equally through process. This case demonstrates that perpetuating land-use narratives that pit environmental, economic and social interests as competing and exclusionary only serves to raise the stakes of environmental decision-making to winner takes all scenarios.

This research suggests the pervasiveness, and the persuasiveness, of a particular construction of ‘local’ interest influenced how different communities were encouraged to participate in SEDP processes, and which threats (and whom they affected) were recognised. In doing so, it engages with and contributes to contemporary debates regarding the rising influence of
community participation, in which the capacity of environmental governance systems to account for the specificity of place in increasingly questioned in terms of community equity. This case demonstrates that increased transparency and engagement with the communities of place is necessary to promote positive, and equitable, social and environmental outcomes in NSW. The interaction between the public, the PAC, and the law in this case reveals a governance approach that, while attempting to increase the spatial awareness and reactivity of environmental decision-making, continues to exhibit a fundamental inability to truly engage with the implications of space and place. It is only through further case study analysis that the substantive impacts of procedural exclusion – of both human and non-human interests – can be examined and the root causes of inequality identified.

By questioning the nature of participation through the PAC processes, this research does the work of legal geography by examining how the experience of participation differed among participants as a result of how and where these processes took place, and the equitability of that experience in terms of burdens and benefits. Examining how this “worlded” (Braverman et al., 2014, p. 1) process relates to the equitable procedural reflection of opposing and supporting justice claims provides an opportunity to examine how scale and space engage (and are engaged by) decision-making processes to inhibit equitable participation. In this way, we can see that environmental governance is not inherently conflict-ridden, but that different community understandings of process, combined with scalar and spatial barriers can transform differencing interests to conflict. Thus, it relies on the responsible management of the symbiotic relationship between participant and process to maximise community input to achieve nuanced social and environmental procedural outcomes. The incapacity of the procedural or legal decision-making processes achieve this in the SEDP decision mean that
opponents of the development have once again turned from the township to the courts to mobilise their justice claims. Meanwhile, both the development, and the EEC’s within it, continue to hang in the balance.
REFERENCES


Ashworth, L. (2015a, 16/5/2015). Springvale Colliery' proposed extension causes a clash with environmentalists. Lithgow Mercury


Christison, R. (2016). *Western Coalfield Timeline* Lithgow State Mine Heritage Park & Railway


Colong Foundation. (2015). Colong Foundation welcomes Minister Stokes decision to hold another review PAC on Springvale mine.


APPENDIX A
Correspondence with the Planning Assessment Commission
Dear Hannah,

Thank you for your email.

In response to your second question, the Commission considers all submissions and presentations that are made within the relevant time frames. It is important to note the total number of submissions made is not as relevant as the issues raised.

In relation to the Springvale First Review Process, there are in fact a total of 1186 submissions publicly available on the our website. Of the 1186 submissions, 462 are in pro-forma format and you may have omitted to download these?

In relation to the Springvale Second Review Process, there are 661 PDF files of submissions publicly available on our website. However, our report correctly states that 648 submissions were received on the review of the project.

The reason for the difference between the number of PDF files available on the website and the number of submissions reported in the report is that there were 13 instances where separate PDF files were inadvertently created for both an email which attached a submission, and the submission itself. The number of submissions stated in the report is however, correct and all of these are publicly available on our website.

Verbal presentations may be made at public hearings or public meetings but are not counted in the total number of written submissions made in relation to a review of a project. The number of speakers is separately noted and recorded.

A person who makes a written submission is not precluded from subsequently making a verbal presentation at a public hearing or public meeting. However, if the person also provides a written copy of their verbal presentation to the Commission, it is treated as part of the hearing or meeting process and reported accordingly – that is, it is not counted as a written submission.

We hope this assists you with your thesis. Kind regards,
Jorge Van Den Brande | Planning Officer Secretariat

NSW Planning Assessment Commission

Level 3, 201 Elizabeth Street Sydney NSW 2000


* * * Please consider the environment before printing this e-mail.
Dear Aaron,

I am doing an Honours thesis for the Uni of Sydney School of Geosciences, on the topic of public participation in environmental decision-making, using the Springvale Extension as a case study.

As part of that, I have analysed the written and verbal submissions made to the PAC for the first (Springvale Mine Extension Project - R031/15) and the second (Springvale Mine Extension Project Second Review - R032/15) Springvale PAC. I have a couple of questions regarding the submissions which I hope you can clear up.

**Do all written submissions get made publicly available on the PAC website?**

In the Review Report for the first PAC it states that the PAC received 1186 submissions, but when I downloaded the submissions by individual participant I recorded 778. Similarly for the second it received 648 submissions but I downloaded only 551 submissions.

One reason for a discrepancy might be due to the fact that I counted submissions by individual, whereas the PAC may have counted by documents received. Therefore in the cases where one participant submitted multiple documents, I would count 1 submission whereas the PAC would record 2 or 3 documents. Even considering this, it seems too large a difference to be accounted for that way.

I understand that the verbal presentations are voluntarily made public, is this the same for the written ones?

**Does the PAC cross-reference submissions to account for duplicate participants?**

For example, if one person signed a petition, presented a verbal submission at a PAC meeting and also submitted a separate written submission, would that be counted as three different submissions?

If you can help on either question I'd be extremely grateful. Kind regards,

Hannah Della Bosca