



MONASH University

**Governmentality, Regulatory Capture and Re-imagining
Citizen Subjectivities as Resistance: the case of the Mount
Thorley-Warkworth coal mine expansion in New South
Wales, Australia**

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A thesis submitted for the degree of *Doctor of Philosophy* at

Monash University in May 2017

School of Political and Social Inquiry

For the three loves of my life: Gavin, Liam and Rhys

**And for the indomitable community of Bulga, for continuing
to never surrender.**

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Abstract

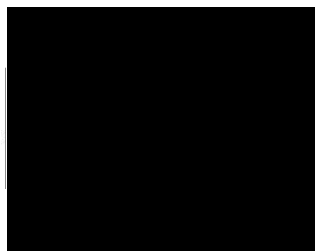
This thesis aims to understand how citizens engage with the Environmental Impact Assessment (EIA) process to influence decision making outcomes for major developments. This phenomenon is examined through an in depth case study of the small village of Bulga, located in the Upper Hunter Valley, in New South Wales. Residents of Bulga, in their efforts to stop the expansion of an open cut coal mine close to their village, looked to the EIA process to provide avenues for engagement that would result in a positive outcome for their community. However the actions of government bureaucrats, politicians and the mining company significantly curtailed the influence of public participation within the EIA process. Such an effect of power marginalised the Bulga community. Yet it also catalysed Bulga residents to strategies of resistance that both reframed and rescaled their understandings of citizenship and justice. Understanding these actions and re-actions in light of strategies and relations of power helps us to illuminate the ways and means by which citizens, government and proponent worked to effect influence on land use decision making.

*Governmentality, Regulatory Capture and Re-Imagining Citizen Subjectivities as Resistance:
the case of the Mount Thorley-Warkworth coal mine expansion in New South Wales, Australia*

Declaration

This thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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Acknowledgements

Firstly, I would like to thank the remarkable community of Bulga, NSW and, in particular, the members of the Bulga Milbrodale Progress Association who so kindly agreed to meet with me and discuss their own experiences with the EIA process. John and Leslie Krey were especially helpful in providing me with contacts, information and follow-up and for that I remain greatly indebted to them. I would also like to thank Chief Justice Brian Preston of the Land and Environment Court, NSW and Sue Higginson of the Environmental Defenders Office, NSW for being so generous with their time and agreeing to meet with me. For their support and encouragement during my PhD candidature, I would like to thank my supervisors: Ruth Lane, Libby Porter and Wayne Gumley. I am especially appreciative of Ruth for encouraging me to write this thesis in the first place, and to Libby for remaining my supervisor even after moving on to greater things at RMIT. My friends and family provided much needed support throughout this process and I am very grateful for the understanding extended to me when I was often seldom seen. Most importantly, I would like to thank my husband, Gavin, and my two sons, Liam and Rhys for being my constant cheerleaders, for unwavering support and love, and for just being absolutely wonderful in general. Without them, I would never have completed this thesis. And finally, I would like to thank my two Siamese cats, Ollie and Jules, both of whom kept me company and my lap warm through the many hours of writing that led to this work.

Abbreviations

Biodiversity Offsets Policy – NSW Biodiversity Offsets Policy for Major Projects

BMPA – Bulga Milbrodale Progress Association

DoPE – Department of Planning and Environment, NSW

EP&A Act – Environment Planning and Assessment Act

EDONSW – Environmental Defenders Office, NSW

EIA – Environmental Impact Assessment

EIS – Environmental Impact Statement

EPBC ACT – Environment Protection and Biodiversity Conservation Act 1999

ICAC - Independent Commission Against Corruption

L&EC – Land and Environment Court, NSW

NIMBY – Not In My Back Yard

PAC – Planning Assessment Committee

SEPP – State Environmental Planning Policy 2007 (Mining, Petroleum and Extractive Industries)

WSW – Warkworth Sand Woods

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Chapter One:

Introduction

1.1 Introduction



Figure 1.1 Protest by BMPA and community of Bulga against changes to the NSW SEPP¹

'More than half of NSW sees coal and CSG negatively: poll²; Mining protesters could face seven years' jail under Baird government CSG plans³; Mass protests at mine sites in northern NSW⁴; Mining industry faces civil disobedience as protesters prepare to fight Adani mine⁵'.

Arriving in Australia from Canada, I was accustomed to a commodity-driven economy and used to seeing news articles and media stories on large, environmentally damaging developments (e.g. 'tar sands' in Alberta where I grew up) that described some opposition from the public. They were, however, nowhere near as ubiquitous as they seemed to be in Australia. In Australia, communities seemed to be constantly in the news protesting coal seam

¹<http://www.smh.com.au/environment/hitting-rock-bottom-prospect-of-big-revamp-of-nsw-environmental-controls-20161015-gs39sa.html>

²<http://www.smh.com.au/national/more-than-half-of-nsw-sees-coal-and-gsc-negatively-poll-20160401-gnwdei.html>

³<http://www.smh.com.au/nsw/mining-protesters-face-seven-years-jail-under-baird-government-csg-plans-20160310-gnfdi8.html>

⁴<http://www.dailytelegraph.com.au/news/nsw/mass-protests-at-mine-sites-in-northern-nsw/news-story/50a04de1024fa0b51086a78070581171>

⁵<http://www.couriermail.com.au/news/queensland/mining-industry-faces-civil-disobedience-as-protesters-prepare-to-fight-adani-mine/news-story/d1584149568a22b8fb608d1cdfa412a6>

gas and coal mines. The state and commonwealth governments seemed to turn a deaf ear to this cacophony of public dissent. News story after news story had farmers fighting coal seam gas and communities coal mines, engaging with the planning process through all the formal avenues of interaction provided by the Environmental Impact Assessment (EIA) process, and still these types of developments were approved.

If the requirement to allow public comment is central to the Australian environmental planning and management system through the EIA process, then why did the communities engaging with the process have so little influence over decision making outcomes? It would appear that despite the existence of the EIA process as part of the decision making process for major developments, the environment and those individuals and communities impacted by these developments seldom seemed to have been a consideration when the approvals came through....and they always came through.

One emblematic example of this phenomena, and the 'David and Goliath' style battle that so often ensues, is the tiny village of Bulga, in New South Wales (NSW). Unlike the many other villages and towns nearby Bulga (e.g. Warkworth, Camberwell, and Ravenhurst) that had ceased to exist due to mine expansions, Bulga lives to fight on even today. The community of Bulga's extraordinary story began in 2010 when Rio Tinto announced plans to expand the Mount Thorley-Warkworth (MTW) open cut coal mine to within 2600 metres of the village. Like other communities in similar situations, the community of Bulga raised their objections to the expansion with the Department of Planning and Environment (DoPE) through all venues available to them in the NSW EIA process. And then, finding that this was insufficient to effect influence on governmental decision makers, they went one step further and took the DoPE

and Rio Tinto to court. Such a step led to the transformation of this small community in NSW into what can be considered a watershed case for community rights. At the Land and Environmental Court (L&EC) of NSW, the community of Bulga's community association, the Bulga Milbrodale Progress Association (BMPA), took on Rio Tinto, the DoPE and their army of corporate lawyers aided only by a single barrister from the Environmental Defenders Office, NSW (EDONSW) and a small number of experts they had managed to engage in their defence. And won. In a landmark ruling, the Chief Justice of the L&EC stated that the adverse impacts from the proposed extension outweighed the potential economic benefits. This historic win marked the first time in NSW that a community group had managed to overturn a developmental approval for a mine. Seen from that vantage point, the EIA process and planning system in NSW looked to function as a system that had proved accountable to and was influenced by the public. However, the BMPA's win was based on particular planning legislation requirements that led to specific environmental, social and health impacts being considered unacceptably detrimental to either the community or the local ecosystem or both. The legislation had worked to disadvantage Rio Tinto and the DoPE, and the reaction from the NSW Government was swift. Shortly afterwards, the offending legislation was amended to ensure an approval for Rio Tinto. Not content with merely ensuring the approval of the MTW mine expansion, the NSW Government went further and ensured that planning decision making outcomes could no longer be subject to challenge in court.

These legislative changes were a slap in the face to the community of Bulga and the BMPA. Angered, the community ramped up their efforts to overturn the approval, this time moving outside of the EIA process that now offered no alternative pathways for engagement. Stepping outside the EIA process to effect change set the BMPA and community of Bulga on an

extraordinary journey towards a redefining of community and citizenship. As evidenced by the community of Bulga's public protests, media engagement and community rebranding, they refused to yield to Rio Tinto and the NSW Government. Given the small size of the village, such indomitable will to triumph over injustice was compelling to say the least. In the community of Bulga's fight to save their village, they had engaged with every formal avenue for engagement possible in the EIA process for NSW. This case study, for me, provided an unsurpassable opportunity to explore the power dynamics present within the EIA process and what effects such dynamics had on decision making outcomes.

1.2 Positioning my research

Engaging with the disciplines of human geography and planning theory, I approached my research from a normative position that sought to answer specific questions about how the EIA process operates in terms of engagement with and accountability to the public. My position was also politically motivated as I felt, and continue to feel, that democratic governments have a duty to serve the citizens that elected them and this includes prioritizing environment and social needs as well as the economy. My thesis employs a social constructivist framework to guide an exploration of how residents of Bulga engage with the EIA process and the broader areas of environmental governance in their struggle against the extension of the Mt.Thorley-Warkworth coal mine. Drawing on a Foucauldian understanding of power as dispersed through a complex network of discourses, practices and relationships as my theoretical framing, I explore the role of truth regimes and their corresponding discourses in reinforcing and entrenching specific power relations on the one hand and in generating new sites for expressions of resistance on the other. I deploy citizenship, and governmentality as conceptual lenses, through which I examine: how transformation of place is felt, negotiated and resisted by the residents of Bulga; the ways in which spaces and

places for engagement in land use decision making are produced in and through struggles between a multiplicity of social relations, institutions and forces; and how framings of citizenship and engagement are deployed both within and alongside EIA process to create sites of resistance and power for communities. Table 1.1 below outlines my research questions.

Table 1.1: Research objectives and questions

Research Objectives	Research Questions
To gain an understanding of how power is being evidenced, operated and employed within the EIA process by the community, the government and the proponent.	How is power being evidenced and understood within land use decision-making processes within NSW? How does the NSW Government enact technologies of government as part of a strategy to influence decision making outcomes within development approvals? How and in what ways are communities engaging with and deploying power within the land use decision-making process in Australia?
To explore how the community group engaged with the EIA process and how this relates to their construction and understanding of place, justice and citizenship.	What understandings of citizenship underpin formal processes for community participation in land use decision-making processes in Australia? What role does place play in influencing how citizens engage with the EIA process? Also, what impact do notions of place have on their expectations of outcome and reactions to engagement with the EIA process? How does the community engage with the EIA process and does this change over time? At what point and why does the community choose to operate outside of formal avenues for engagement?

1.3 Bulga, New South Wales

I discuss my case study village, Bulga, in greater detail in Chapter Five of this thesis. Here, I provide a quick overview. The village of Bulga is located in the Upper Hunter Valley in NSW, in a landscape dominated by coal mines, horse studs and vineyards. It is an odd mix of industries, and one which sets up the potential for significant conflict within the area. Bulga lies approximately six kilometres from the Mount Thorley-Warkworth (MTW) coal mine, currently majority owned by Rio Tinto but operated locally by Coal & Allied, Ltd. (Rio Tinto has recently sold the MTW mine to Yancoal, a state-owned Chinese company for \$3.2 billion AUS; the MTW expansion approval appears to have been key in achieving this sale.) Mt. Thorley and Warkworth are actually two large open cut coal mines but operate as one unit in practice. The MTW mine has been in existence for some time; it started in 1981 and has since been in constant production.⁶ The residents of Bulga have historically had an amicable relationship with the MTW mine, accepting its existence and relying on promises from the 2003 expansion application that the mine would close in 2021 and specific landmarks and ecosystems, like the critically endangered Warkworth Sand Woods, would be preserved in perpetuity.

This all changed in early 2010, when Rio Tinto announced it had applied to the DoPE for an extension on the MTW mine. This extension request would see them revoke previous commitments to preserve a strand of critically endangered woodland, the Warkworth Sands Woodlands; destroy two significant landmarks, Saddle Ridge and Wallaby Scrub Road; and circumvent a Ministerial Deed of Agreement in their quest for more coal. The residents of Bulga objected to the expansion of the mine and began a seven-year battle to defeat Rio

⁶ <http://www.riotinto.com/australia/rtca/mount-thorley-warkworth-10427.aspx>

Tinto that continues to date. Their fight to stop the MTW mine saw them engage with each and every possible avenue available to them within the formal EIA process, including legal action. The Bulga community's exercise of their rights was met with fierce opposition from the NSW Government, the DoPE and Rio Tinto at every turn. Legislation was amended, court cases were filed and collusion occurred between the NSW Government and Rio Tinto in order to ensure that the MTW mine expansion got its approval.

It is this trail of governmental machinations, corporate influence and personal struggle that made the village of Bulga a case study like no other.

The complexity surrounding the village of Bulga's interaction with the EIA process resulted in my decision to use a single case study, rather than a comparative one. I strongly felt that in order to do this exceptional case study justice, it would be more appropriate to focus on it alone - in other words, I would be conducting a single case study methodology and research design. Indeed, the data coming out of the Bulga, NSW study was so voluminous, involved so many different people/organisations, had such significant media exposure and engaged with every formal avenue for participation with the EIA process that it became, in and of itself, a coherent source that the entire PhD could be based on. It touched on everything that I had been looking to explore and analyse within my research. Moreover, it did so over a timeline of seven years (and is still ongoing) and generated more data that I had ever expected or could possibly include in my analysis. I had to draw a line under data collection in mid-2016; however, the community of Bulga's fight continues.

1.4 The Environmental Impact Assessment (EIA) process

The EIA process, first introduced in the United States in 1969, was designed to help government regulators to identify and mitigate the environmental impacts caused by major developments. As a process, EIA evolved to allow for public input and comment, ostensibly working towards enabling public influence in decision making and approval outcomes, and providing governments with a claim towards accountability and transparency with regards to planning decisions. It appeared that a process had been created that would work to alleviate environmental issues with potentially contentious developments, while at the same time working to engage with public citizens and address their concerns. Unfortunately, a quick look through any news articles reporting on major developments, such as coal mines, will show that the reality is very different. Despite the EIA process with its avenues for public input being used for this sort of major development, the public citizen is often left out of the decision making process, forced to resort to other means to try and engage with decision makers and influence outcomes.

Much research has been done examining the effectiveness of the EIA process on reducing environmental impacts, with the majority showing minimal effectiveness on development outcomes (Cashmore et al., 2008, Cashmore et al., 2004, Cashmore et al., 2010, Agency and Sadler, 1996, Bonyhady and Macintosh, 2010, Richardson and Cashmore, 2011, Gumley, 2015, Devlin, 2006). Cashmore et al. (2004) suggest that although the expected outcome of using an EIA process is a more sustainable development, this has been shown to most often not be the case. For Cashmore et al. (2004 p.307) it is the '...passive integration with the decision processes, in part a result of the preoccupation with the EIA report, (that) has significantly reduced its substantive outcomes' suggesting that the effectiveness of the EIA process has

been undermined by the report's ability to influence decision makers beyond the basic science, as it functions as a recommendation and not a mandate (legal requirement). This is likely due to the fact that the political influences on the EIA process are not considered and thus, while the EIA process is required as part of the development approval process, that does not mean that its recommendations are more than just that – recommendations. In other words, although the EIA is required as part of the planning decision making process, it is a report that the government takes into consideration when making their decisions – they are not legally bound to accept all the recommendations within the report. I address this concern in Chapters Four and Eight, highlighting the potential implications for land use decision making.

1.5 Significance

Although my research focuses on a particular form of instrument (the EIA process) within planning decision-making, it also addresses a broader issue about the post-political nature of public policy-making. The post-political nature of public policy-making refers to attempts to regulate that pre-suppose the existence of consensus rather than conflict and imply that conflict is easily transcended (Topal, 2009:p.2-3). Armstrong (2012) links the post-political nature of public policy-making to forms of neoliberal governmentality that have replaced conflict with technologies of government that promote consensus, agreement and technocratic environmental management supported by a framework of science and experts who alone are expected to resolve conflicts (See also Aitken et al., 2008).

Drawing on this notion of the post-political as a form of governance that emphasises consent over conflict, my research seeks to contribute to the literature by exposing the conflictual and exclusive nature of planning policies, refuting the idea of these policies as consensual

processes through an exploration of the effects of power. Consensus as a goal within planning policy has been facilitated by the turn towards communicative planning (Healy, 1997, Habermas and McCarthy, 1985) with its emphasis on engagement with stakeholders and the broader public through avenues of participation. The inclusion of avenues for public participation within planning policy is conceived of as a positive move towards inclusive, democratic policy yet in practice this often presents 'as a system focused on carefully stage-managed processes with subtle but clearly defined parameters of what is open for debate.' (MacDonald, 2013: p 90). Such a system can seem legitimate and accountable, but is geared towards minimalizing the ability for conflicting views to be given a meaningful input. The end result is a sophisticated obfuscation of both the political and the role of power in these processes (MacDonald, 2013).

With regard to the EIA process, one of the main issues raised in the literature is that of the ability of the public to effectively interact with the process (See among others Abels, 2007, Agrawal and Gibson, 1999, Watson, 2005, Summerville et al., 2008, Glucker et al., 2013, O'Faircheallaigh, 2010). This interaction is restricted by constrained and limited avenues for participation and by the language and format of the documents related to the EIA process. The Environmental Impact Statement (EIS) that comprises the central document is a vast tome; often thousands of pages long, which is parsed in scientific and technical jargon. These two factors alone present a significant barrier to the public's ability to meaningfully interact with the EIA process; coupled with very restricted time limits in which to view and respond to the EIS, it is virtually impossible.

The EIA process also emphasises the legitimacy of the expert over that of the citizen; to critique the EIS document effectively a scientific and technical argument must be used by citizens (Jasanoff, 2003). As the EIS document contains scientific and technical information from multiple different fields of science and technology it is highly unlikely - even with a large population of citizens who want to participate – that these could be effectively addressed. This bias towards the expert marginalises the citizen and in doing so, shifts the balance of power within the EIA process firmly towards the government and proponent.

The types of resource access issues mentioned significantly limit the ability that citizens have to influence the outcome of the EIA process. As this process is geared towards encouraging citizen participation, resource access issues like these serve to illuminate the ways in which technologies of government constrain citizens, forcing them to seek informal avenues through which to participate and effect influence on planning outcomes. My research seeks to provide a clearer understanding of how power is operating within the EIA process, in the hopes of providing a means and way for communities to affect real influence on planning outcomes.

1.6 Overview of methods and approach

To understand how power is expressed and being operationalized within the EIA process in Australia, I needed to select case studies involving communities that had engaged with the EIA process at as many of the potential formal participatory stages as possible. I approached both the DoPE and Rio Tinto as well, as I wished to provide their own perspective and experience of the EIA process but was unable to as neither body replied to any of my overtures at contact. I wasn't rebuffed, I was simply ignored. As mentioned earlier, the community of Bulga having engaged completely with the EIA process, fit the key. In order to

gain access to the community, I contacted the head of the BMPA. He was not only happy to meet with me for an interview, he was also key in introducing me to the whole of the BMPA, provided updates on BMPA media reports and interviews, and forwarded on information relevant to the ongoing EIA process he thought I might be interested in.

My initial fieldwork took place over a two and a half week period in October 2014. During this time, I met with the members of the BMPA individually in their homes and as a group for a focus session while in Bulga, NSW. A win for the BMPA earlier in the year, on their request for merit review in the Land and Environmental Court, NSW, had resulted in the overturning of the approval of the MTW extension. The decision had been immediately appealed by Rio Tinto and the DoPE and a ruling was pending. I revisited Bulga in December 2014 for the second Planning Assessment Committee (PAC) hearing (occurring because of Rio's appeal). The court cases resulted in my fieldwork extending to Sydney, NSW in May 2015 to interview the chief barrister for the EDONSW and the Chief Justice of the L&EC. In September 2015, I returned again for another PAC hearing. I also interviewed key BMPA members for a second time in order to get a clearer picture of how the BMPA had been able to garner international media recognition, why they chose to do so and what effect they were expecting based on this broader exposure. It had become apparent in my preliminary analysis that the BMPA was engaging with environmental discourses at across multiple scales and I required more information from them regarding this evolving direction. In addition to semi-structured interviews, I engaged in participant observation at PAC hearings, and used NVIVO to aid my analysis of legislative documents, websites, media stories, social media sites and community meeting minutes. Further discussion of my methods can be found in Chapter Three of this thesis.

1.7 Thesis overview

This thesis begins in Chapter Two with a discussion of my theoretical and conceptual framings and moves on in Chapter Three to discuss my research methods and methodology. Chapter Four provides some background on the EIA process, how EIA operates in Australia and NSW and concludes with a discussion of the political influences inherent in the process. In Chapter Five, I describe the community of Bulga and the BMPA. This chapter discusses the significance of the BMPA and its members in the facilitating and maintaining the fight against the MTW mine expansion. Chapters Six, Seven and Eight discuss the results of my research analysis. In Chapter Six, I explore how the BMPA and Bulga community re-identified themselves as citizens at a local scale and the role and significance of place in this re-scaling. Chapter Seven addresses how the BMPA worked to resist the outcomes of the EIA process and the approval of the MTW mine expansion. It examines the role of media and community groups in facilitating this resistance. Finally, Chapter Eight engages with the political nature of the EIA process and illuminates how the NSW Government employed technologies of government to marginalise and, finally, exclude the BMPA and Bulga community from influence within the EIA process. Chapter Nine provides my conclusion, research contributions and recommendations for ongoing research.

Chapter Two:

Framing place, power and resistance in the environmental impact assessment process

2.1 Introduction

In Australia, despite the adoption of the Environmental Impact Assessment (EIA) process as part of decision making outcomes for projects that affect regional communities or sensitive environments, public concern remains. While the EIA process offers formal avenues for public engagement, public influence on final decision making outcomes in most cases is minimal (Agency and Sadler, 1996, Bonyhady and Macintosh, 2010). This thesis is an attempt to unpack this conundrum. To do so, I looked to see how power is being produced, practiced and strategized within the EIA process. My analysis was based on a Foucauldian notion of power to facilitate my understanding of the way in which the practices of regulation and resistance were operating within the EIA process. I chose to use Foucault's idea of governmentality and the concept of citizenship as my analytics. Together, these two concepts provide a unique lens through which I can explore the ways in which the power/knowledge discourses are practiced within the EIA process and, for those individuals engaged with this process, the effect of these on the creation of self as a subject.

This chapter begins by discussing Foucault's notion of power in part 2.1. Part 2.2 is an exploration of the Foucauldian concept of governmentality, particularly how technologies of government produce knowledge/power discourses that create spaces within which power can be exercised and subjectivities transformed. In part 2.3, the idea of citizenship is unpacked and linked to the notions of place and belonging as a means of resistance. Finally, in part 2.4, I describe how my theoretical and conceptual frameworks work together to illuminate the practices, strategies and effects of power within the EIA process.

2.2 Part One: Michel Foucault and Power

To understand the power dynamics within the EIA process, I looked to Michel Foucault's understanding of power. Foucault's (1984) notion that power is decentralised, emanating from everywhere and dispersed through complex networks of discourses, practices and relationships enabled an unpacking of the EIA process in action. In particular, the idea that power is not inherently negative or oppressive but productive of subjects, actions and effects allowed for a fuller understanding of the ways in which power might be operating and strategized within the EIA process. For Foucault, power is not concentrated or a commodity to be held or seized by an individual; it is ubiquitous and acts everywhere because it comes from everywhere. It is not innately present in actors but rather actors are rendered powerful within a network of discourses and practices that frame and justify them as powerful in relation to others (Foucault, 1977).

The creation of discourses – ways of thinking, doing and speaking – is understood by Foucault to be the means by which certain kinds of knowledge become accepted as truths. These truths then shape boundaries of agency – the ability to engage with broader social arenas - privileging some spaces and marginalising others. Power permeates and courses through these spaces, sparking a multiplicity of points of resistance and acceptance. It also produces and embeds particular institutional patterns and practices within these spaces, so that spaces are never seen as neutral but are always infused with existing relations of power (Foucault et al., 1991). In this way, society is reflective of manifold relations of power that permeate, characterise and constitute the social body. These relations of power cannot be established, consolidated or implemented without the production, accumulation, circulation and functioning of a discourse (Foucault, 2012).

According to Foucault,

“Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regimes of truth, its ‘general politics’ of truth: that is, the types of discourse which it accepts and makes function as true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.” (Foucault, 2000:131)

Power, therefore, governs by permission or refusal through regimes of truth that must be promulgated and reproduced to remain stable. In terms of land use decision making, a truth regime that reflects neo-liberalism valorises the idea of a powerful economy driven by natural resource exploitation and consumption. Thus, the state promotes resource extraction over other land uses such that the neo-liberal truth regime becomes an effect of power in land use decision making.

In western secular democracies, like Australia, neo-liberal regimes of truth are centred on scientific and technical discourses and the institutions that produce and support them (Richardson, 1996). This idea is particularly salient for my research, as the EIA process is driven by scientific and technical knowledge. As truth is taken to be an effect of power, then the knowledge discourse it supports also becomes an effect of power. Scientific knowledge is promulgated through the EIA process as superior to all other forms of knowledge. This imbalance of power is embedded within the ‘institution’ of the EIA process itself, and thus, the reification of science within land use policy renders other knowledge forms subordinate (Cashmore and Axelsson, 2012, Cashmore and Richardson, 2012, Partidario and Sheate, 2013, Richardson, 2005). Where knowledge, and correspondingly, truth, is linked to influential participation, those unable to engage with the EIA process by utilizing the dominant scientific discourse are left with little influence on decision-making processes.

This valorisation of the science/technology discourse, along with the “relative paucity or rarity of what it is possible to think and say at any one time” (McNay, 2013 p.86) in terms of discourse production and meaning, shows how discourses are influenced by external social and political forces that exert strategies of exclusion, domination and control (McNay, 2013). This process is further re-enforced by disciplinary boundaries which have the effect of rendering some texts as canonized, with value accorded based on the author, institution or organization. Disciplinary boundaries work to further maintain control through limiting the understanding of and access to discourse through the use of technical jargon, elites and education schemes (Richardson, 1996). With regard to the EIA process, this rarefaction process is particularly germane as it is guided by specific legislation, has very circumscribed legal avenues for challenging outcomes, and requires a high level of scientific understanding across multiple disciplines if the EIS document is to be fully understood. Consequently, this construction of truth, discourse and effect offers a lens with which to examine how the residents of Bulga were able to engage with the EIA process. Further, it enables an unpacking of the power dynamics and an exploration of the spaces of inclusion/exclusion evolving within the EIA process.

It is the existence of discourses as social practices - meaning they exist within spaces and places - that renders them susceptible to effects from these arenas. As spaces are never neutral but always possessed of existing relations of power, a ‘strategic reversibility’ (Foucault, 1991:5) of power relations is possible, resulting in governmental practices and regimes of truth that are continual sites of resistance. This inherent continuous resistance produces possibilities for subversion, appropriation and reconstruction (Foucault, 1991) within these spaces of both practices and discourses. My research engages with this element

to explore the discourses and strategies for resistance that are present, altered and created within the EIA process for and by the residents of Bulga as they interact with the process.

In light of the inclusion of the EIA process as part of planning policy and environmental decision making, I have chosen to engage with the literature arising from planning theory to illuminate further the effect of power within the EIA process. Initially, communicative planning was conceived of as a way to move beyond the previously dominant framing of planning policy as the implementation of rational approaches by experts. The communicative or 'argumentative' turn was used to explore opportunities of discourse as a means to address planning policy's political dimensions (Fischer and Forester, 1993).

Grounded in a Habermasian communicative rationality, this paradigm was taken up by several key theorists (Healy, 1997, Forester, 1993, Douglass and Friedmann, 1998, Fischer and Forester, 1993), but was critiqued by others on the basis of its view of power as strictly negative, along with its dependence on a consensual, pluralistic political model (Richardson, 1996). More recently, Foucault's conceptualisation of power has been employed as a theoretical framework to understand how power operates within planning policies (Flyvbjerg et al., 2002, Dabinett and Richardson, 1999, Richardson, 1996, Richardson and Jensen, 2003, Sharp and Richardson, 2001, Hajer and Versteeg, 2005, Huxley and Yiftachel, 2000). This has emerged partly in response to the domination of communicative and collaborative conceptual frameworks in planning and environmental decision-making theorisation (Habermas and McCarthy, 1985, Healy, 1997).

In the realm of environmental politics, the notion of a consensual, pluralistic model was confronted by the reality of conflict that frequently precluded consensus. Additionally, such

conflicts could, and did, produce productive outcomes for some marginalised groups (For example, Rasch, 2012, Haarstad and Fløysand, 2007, Perreault, 2006), thus refuting the idea that conflict – and its inherent power dynamics - had solely negative outcomes. In light of these realities, many academics looked to expand their understanding of discourse beyond the Habermasian notion. For example, Richardson (1996 p.280) sees Foucault's notion of discourse analysis as the means to acknowledge '...the agonist nature of planning by unmasking power.'. Hajer and Versteeg (2005 p.176) also agreed that the Foucauldian notion of discourse analysis helped to unmask power by allowing for an understanding of the role of language in planning, as well as the embeddedness of language in practice. Further, it helped to expose the mechanisms at work within these processes by searching for the patterns of transformation of power, among individuals, as well as institutions and forms of governance.

Within environmental politics, for example, it is apparent that the operationalization of particular environmental discourses have had a profound effect on policy and development outcomes. A Foucauldian discourse analysis can facilitate the unpacking of the strategies that create such policies, illuminating the ways in which discourses led to the enhancement, reduction or discarding of meanings that underlay the creation of laws and institutions governing environmental policy (Hajer and Versteeg, 2005). Agrawal's (1999) research into community conservation is an illustration of this sort of shift in meaning. He states that: 'In a break from previous work on development which considered communities to hinder progressive social change, current writing champions the role of community in bringing about decentralisation, meaningful participation, cultural autonomy and conservation.' (Agrawal and Gibson, 1999 p.630) The implications from this shift in meaning

resulted in the inclusion of community groups within conservation management strategies, a complete reversal from previous management strategies that deliberately excluded community input or involvement.

The use of Foucault's notion of power enables the exploration of powerful actors' appropriation of knowledge and the resulting discourses within environmental politics. In my thesis, I deployed this understanding toward unmasking power within the EIA process. Focussing on the networked nature of power and the ways in which it operated within and between spaces, institutions and actors, revealed how power is practiced and strategized within the EIA process.

2.3 Part Two: Governmentality

Foucault's governmentality incorporates the idea of government as characterised by constantly shifting power/knowledges, institutions and subjectivities that result in what he refers to as the 'conduct of the conduct' (Foucault, 1978). The 'conduct of the conduct' are the methods, techniques and strategies used to control the population. These may be agencies of the state or they may take more amorphous forms, such as regulations, planning instruments, institutions or authority figures (including that of the self) that function to influence an individual's actions and thoughts (Agrawal, 2005b p.7). These sources work to suggest that certain forms of knowledge are truths, and the acceptance of these truths results in self-regulating behaviours (subjectivities) that become a means through which the population controls itself through its own self-regulating subjectivity. Such truths arise out of favoured discourses that reflect the currently accepted 'rules of right' which provide a formal delimitation of power (Foucault, 1976). These truths function as technologies of government creating spaces in which strategies of knowledge and power are used to shape

the new arenas into domains of government. However, such truths are always partial, contingent and contested, ensuring a constantly shifting field of domination and resistance (Cornwall, 2004) within politics, institutions and subjectivities.

Governmentality hinges on the transformation of subject positions. By this I mean that each individual must re-make themselves as a subject in order to accept certain truths and self-regulate their behaviour accordingly. Environmental subjects, for instance, are those individuals who see the environment as important and worthy of protection and act in a manner that supports this belief. The transformation of subject positions into ones that support government aims is facilitated by the use of regulations and institutions. Agrawal's (2005b) longitudinal case study of the Kumaon villagers in India revealed how the introduction of regulations that moved forest governing down to the local village level led to the transformation most villagers into environmental subjects. By giving the Kumaon villagers the power to self-manage their forests, the Indian government was able to increase compliance to the management goals of the forests and secure economic gains whilst avoiding the protests and rebellion that had previously marred the management of local forests. The shift to forest management at the local level placed the responsibility for sustainably managing the forests' resources on the villagers. This resulted in successful forest management as members of the local village policed and enforced the regulations themselves. The social pressure brought to bear on those individuals who broke the rules was effective in reinforcing the regulations and eventually ensured near total compliance with them. Thus, the transformation of the Kumaon villagers into environmental subjects allowed the India government to effectively control from a distance how the forests were managed through regulations adhered to at the local level (Agrawal, 2005b).

This re-scaling and hollowing-out of government can be viewed as an expression of governmentality in that it can be 'seen as an assemblage of rationalities, strategies, technologies, and techniques that allow 'government at a distance'' (Larner and Butler, 2005: 83). Governmentality is therefore a shift in the spatialisation of government (Rose, 1996). It disperses governing practices throughout society, transforming subjectivities and displacing formal techniques of government with informal ones, creating a 'hollowed out' state. This 'hollowed-out' state is linked by networks of public, private and community sector actors, each of whom operates in amongst the core government institutions (Skelcher, 2000) . Accordingly, governing occurs at different scales and within disparate institutions spread among and across these scales; a form of governance-beyond-the-state (Swyngedouw, 2005). This spread of governance does not diminish the power of the state, however, it is merely a displacement that indicates a transformation of statehood. Indeed, the Kumaon villagers, having been transformed into environmental subjects through the dispersion of regulation to the local level, are still working toward the desired economic ends of the Indian government through their adherence to its forest management plans (Agrawal, 2005a). Thus, as Eric Swyngedouw points out in his interrogation of the emergence of liberal democratic politics, "socially innovative arrangements of governance-beyond-the-state are fundamentally Janus-faced" (Swyngedouw, 2005:1).

Additionally, this 'hollowing out' of the state through new governance regimes results in a re-scaling of governance towards both the supranational and the subnational scales (Jessop, 2008, Rose, 1996, Himley, 2008). Swyngedouw (2005 p.1998) addresses this change in the state-civil relationship as a three-fold reorganisation that encompasses: the externalisation of state functions through privatisation, decentralisation and deregulation; up-scaling or

delegating regulation and policy-shaping from the national to the international levels of governance; and a down-scaling to the local resulting in the engagement with new social actors in governance. Environmental governance exists across, between and among these scales. This rescaling of environmental governance, and the social and political construction of these scales, results in new arenas where the 'continuous reshuffling and reorganisations of spatial scales' reflects the 'social strategies and struggles for control and empowerment' (Swyngedouw, 2000: 70).

The term 'glocalization' is used by Swyngedouw and others to describe this re-scaling of governance towards international/local scales - a 'politics of scale' - and it is argued that this restructuring of powers towards the global and local may actually result in a decrease in democratic control for locally rooted organizations. Swyngedouw (1996), for example, in his exploration of the closure of the Belgian mines in Limburg, described a loss of democratic control. The privatisation of governance created a small, elite base that operated politically within institutions and resulted in the increase of control and power for (inter)national or regional business elites. These new institutional forms repudiate the assumption that the creation of local institutions will enhance democratic control for local organizations/communities. The re-scaling of the state does not, therefore, result in a diminishing role of the state apparatus but instead the new 'hollowed out' state possesses a 'decidedly undemocratic and double authoritarian touch, both at the supra-national and the local (urban/regional) level' (Swyngedouw, 1996:1503). Swyngedouw (1996) does however acknowledge the possibility for contestation within these new institutional forms. This potential for contestation is often countered with additional regulations that restrict engagement by and/or marginalise individuals in an effort to limit their influence. In my

thesis, this type of action to counter potential contestation is evident within the EIA process.

I explore this further in Chapters Four and Eight.

Within Australia, the effect of the 'hollowed-out state' can be seen in a neo-liberalization of environmental policy that links the success of the economy to natural resource extraction. Defining natural resources as economic resources, through the creation of procedures that work to identify, classify, extract and market them, transforms the environment into a commodity. The processes used to accomplish this operate as technologies of government that serve to redefine how natural resources are viewed, influencing the way in which institutions and subjectivities frame their understandings of these resources (Agrawal, 2005b). Institutions, processes and regulations are created to support the governmentalisation of the environment, and promote a discourse that views natural resources through an economic lens. For example, the EIA process operationalizes the economic discourse for natural resources. Inherent within the EIA is the focus on the use of natural resources for economic gain; it does not presume another outcome nor entertain an alternative discourse. The institution within which the EIA process is conducted also creates regulations and planning instruments that focus on the management of natural resources for economic gain. The individuals operationalizing these regulations are transformed into economic subjects by the discourse of natural resources for economic gain promoted within the regulations themselves. Decision making occurring within the context of natural resource extraction is therefore based on the presumption of a subjectivity that embraces development as an economic goal.

In this thesis, I look to unmask how individuals and communities impacted by natural resource extraction engage with the EIA process and the subjectivities they create for themselves. The individuals engaging with the EIA process may or may not accept the economic discourse for natural resources. If, as was the case with the community of Bulga, they do not become an economic subject, then they are resisting the dominant discourse operationalized for natural resource extraction within Australia. My goal here was to explore the alternative subjectivities created by the community of Bulga to reveal how these supported their resistance to the MTW mine expansion.

2.4 Part Three: Citizenship

Citizenship may be understood as the means through which individuals create themselves as subjects who are linked together through a particular attribution, such as a nation, a location or a cultural or ethnic identity. The concept of citizenship in a democracy has been approached from many different angles within the literature, however, for the purposes of this thesis I chose to focus on notions of liberal and community citizenship. Liberal citizenship can be defined as the achievement of legal rights arising from three distinct categories: social, civil and political rights (Marshall and Bottomore, 1992). Community citizenship recognises the relationship between rights, culture and citizenship as distinct from the broader definition seen in liberal citizenship (Phillips and Berman, 2001). In the context of this thesis, I use these two concepts of citizenship to explore the expectations inherent within each as understood by the residents of Bulga.

The notion of liberal citizenship is based in legal rights deriving from an individual's status as designated by the nation state (Phillips and Berman, 2001). It conceives of all citizens as equal; in other words, citizenship transcends difference and offers each member of the state

the same benefits (Young, 1989). Another basic premise of liberal citizenship is that it provides the rights-bearing citizen the ability to participate as equals and guide formal political decision making (Rasch, 2011). The expectations of liberal citizens are therefore based upon the idea of inclusion and influence within the nation state. This presumes a legitimate voice that is recognised by and matters to the state, which exists as a neutral arbiter for these voices. Alongside this, liberal citizenship ascribes particular responsibilities to both the nation state and the individual citizen. Liberal citizens are to act rationally in the protection of their own interests and the nation state's role is to protect their right to do so (Gaventa, 2002).

Liberal citizenship, however, operationalizes discourses and practices that reinforce dominant subject positions, such as maleness and particular ethnicities, resulting in a normalising of these subject positions (Secor, 2004). Therefore, the notion of liberal citizenship as the full and equal inclusion of all citizens is at odds with the reality experienced by most citizens of any nation. This is particularly true for minority groups and women (Rasch, 2011 p.126) For liberal citizenship then, the gap between the reality and the rhetoric remains large. As Young (1989 p.231) states "the ideal that the activities of citizenship express or create a general will that transcends the particular differences of group affiliation, situation, and interest has in practice excluded groups judged not capable of adopting that general point of view; the idea of citizenship as expressing a general will has tended to enforce a homogeneity of citizens". Further, Young (1989 p.231) notes that "where differences in capacities, culture, values, and behavioural styles exist among groups, but some of these groups are privileged, strict adherence to a principle of equal treatment tends to perpetuate oppression or disadvantage". It is in light of these differences and the

oppression and/or disadvantage experienced as a result, that groups of individuals move towards more differentiated forms of citizenship in which their existence as a marginalised and/or vulnerable group may be recognized by governing bodies (Rasch, 2011). These new forms of citizenship become a key form of resistance against the dominant discourses, as well as the increasing control of capital (Purcell, 2003).

Community citizenship is one form of this differentiated type of citizenship. Having arisen from an understanding that the granting of citizenship did not necessarily result in equal rights for all, the focus in the literature shifted to explore the ways in which citizens could gain the capacity to increase their own agency. Viewing citizenship as a process through which groups can leverage their own agency sees the citizen as an active participant able to contest legal frameworks, dominant discourses and social practices (Rasch, 2011, Rasch, 2012, Gaventa, 2002). Re-conceptualising citizenship thus enables a fuller exploration of how forms of citizen agency are enacted by different groups. The process of reconstituting citizenship offers a way for citizens to rethink their political voice and potentially work to effect change on political culture and economic and social narratives.

The idea of community citizenship parallels the notion of ethnic and also urban citizenship in that they are all conceived of as a community-based identity derived from particular characteristics which help to constitute a form of belonging (Soysal, 2001, Uitermark et al., 2005, Troyan, 2008, Rasch, 2012, Rasch, 2011). Constructing citizenship in this more 'local' manner grounds citizenship not necessarily within a particular locale, but with shared beliefs, ethnic identities or experiences that work together to unite a group. Often, these new citizenship forms arise from social movements that work to advance claims to

environmental, social and spatial justice (Purcell, 2003). Operating at a sub-national scale, these new forms of citizenship reflect the lived experiences of individuals and communities impacted by the dominant neo-liberal discourse of economic development. This evolution of community citizenship, arising as it often does within communities negatively impacted by development, can be seen as a form of resistance against discourses that promote neo-liberalism. I explore this idea further in Chapter Six, illuminating how a reframing of citizenship arose in the context of the community of Bulga's struggle to stop the MTW mine expansion.

Recent research by Rasch (2012) also explores this idea of community citizenship as resistance. Her case study on how Guatemalan indigenous citizens worked to resist large-scale mining projects reveals how these citizens exploited the political recognition of their ethnicity to successfully influence the regulation of natural resources. The claim of ethnic citizenship provided means to gain leverage over multi-national corporations and national and state government. By identifying as ethnic citizens, the Guatemalan indigenous communities claim a political identity that legitimizes their identity as ethnic citizens. Rasch's (2012 p.160) notes that,

'Actors involved in these processes base their claims on international agreements that recognise the rights and identity of indigenous peoples and allow them to negotiate the regulation of natural resources on the basis of their ethnic identity (Sieder, 2007) as well as on the decentralisation of laws that define municipal authorities as agents of their own development.'

Such transformations of citizenship occurring at the local level are becoming more frequent (For example, Haarstad and Fløysand, 2007, Perreault, 2006, Troyan, 2008), particularly as indigenous communities continue to gain recognition and rights through identity claims.

Community citizenship can also arise from a need to reaffirm belonging to specific locales or ways of life, outside of ethnic claims. Here, individuals construct meaningful and substantive notions of citizenship derived from claims to place and practice. Centring agency in this way helps to reconfigure citizenship, suggesting that new boundaries of citizenship can be drawn from the 'politics of everyday practices' (Varsanyi, 2006). Such practices become part of a discourse that links them to place, and it is from this uniting of practice and place that citizenship is derived (Secor, 2004). Migrant groups may claim this form of community citizenship, identifying themselves with their new location through everyday practices that help to create and re-create an alternative discourse of citizenship. The creation of this type of alternative citizenship discourse may also occur in response to actions taken by national or state government, as well as in defiance of a citizenship discourse that operates to disenfranchise certain groups or individuals. The LGBT community's response to a lack of recognition within the dominant citizenship discourse was to recreate citizenship such that it was derived from sexual orientation – a sexual citizenship (Concannon, 2008, Kahlina, 2015). This alternative form of citizenship created a community citizenship for those of differing sexual orientations. The reframing of citizenship at a community level enables such marginalised groups to leverage power and resist the dominant citizenship discourse that disadvantages them, whilst at the same time reinforcing the notion of belonging, and potentially of place as well.

2.5 Part Four: Conceptual Framework and Ontological / Epistemological Positioning

Grounded in a Foucauldian understanding of power, this chapter has examined how governmentality and citizenship operating or evolving within the EIA process impact on and are impacted by effects of power. The ontological and epistemological positioning of this thesis engages with these concepts to position the EIA process as a nexus for effects of power played out within the process itself. I employed a Foucauldian understanding of power as evoking of effects based on established truth regimes and their accompanying discourses to explore how the residents of Bulga engaged with the EIA process in their struggle against the MTW mine extension.

The socio-political nature of the EIA process reveals the dominant discourses and truth being networked among and between individuals engaged with the process. These social networks promote a particular regime of truth comprised of strategies and discourses that produce and sustain the effects of power of such a regime (Foucault, 2000 p.132). Foucault's (1991) notion of governmentality provides the lens through which I seek to illuminate these strategies, technologies and associated subjectivities unfolding within the EIA process.

Finally, the notion of community citizenship guides my exploration of the community of Bulga's resistance to the MTW mine expansion. I use citizenship as a lens through which to understand the ways in which the community of Bulga resisted the dominant neo-liberal discourse of natural resources as commodities. I explored how the notion of community citizenship worked toward the creation of alternative subjectivities and discourses by the

community of Bulga as a means to resist the expansion of the MTW mine and gain influence over decision making outcomes.

In the next chapter (Chapter Three), I present and describe my research design, methodology and methods resulting from the theoretical and conceptual framings discussed in this chapter.

Chapter Three:

Research design, methodology, and methods

3.1 Introduction

In keeping with my ontological and epistemological framing that views the EIA process as a nexus of power in which governmentality and citizenship come together, I chose to use a case study methodology in order to observe these processes in real life (Topal, 2009). In this chapter, I will discuss my reasons for selecting case study as a methodology and explain my reasons for the use of a single case in which to explore how power shapes the processes, spaces and networks for interaction between the governmentality and citizenship concepts. I will describe the methods I used to gather and analyse information and conclude with the challenges and changes to research direction during my fieldwork.

3.2 Case study design

Case study research allows for the study of a phenomenon in depth, assuming that what is seen on the surface is often not a reflection of what is actually occurring, and affording an opportunity to thoroughly analyse details that might be lost in another approach (Flyvbjerg, 2006). Case study research is associated with critical realist and social constructivist approaches. A realist approach views cases as something that can be evaluated using empirical inquiry. The social constructivist approach sees cases as constructs of the researcher and/or participants (Aitken, 2010), influenced by critical realism this allows for an acknowledgement of the real world but accepts that this world is understood through social constructions. As my research is based on interviews, analysis and the creation/submission of documents during the real life processes occurring within the context of the EIA process, I employ the constructivist approach to case study research within this thesis, as this supports the idea that the real world is understood through social constructions which influence the viewpoints and experiences of the community of Bulga as they engage with the EIA process.

The use of case studies as a research method is common among many of the social science fields; political science, anthropology, human geography and others choose to engage with the case study methodology to afford an in-depth examination of a particular phenomenon or process (Aitken, 2010, Topal, 2009, Flyvbjerg, 2006). The use of case study research in these fields helps to bring to light interactions between groups or individuals, as well as avenues for policy interaction, that might have gone unnoticed in a more removed inquiry (Aitken, 2010). Bent Flyvbjerg goes so far as to say that ‘...a scientific discipline without a large number of thoroughly executed case studies is a discipline without systematic production of exemplars, and a discipline without exemplars is an ineffective one’ (Flyvbjerg, 2006:219). He goes on to stress that fields within social sciences can only be strengthened by further case studies, as humanity and its myriad differences and interactions can only begin to be understood when derived from the context-dependent knowledge generated by case studies (Flyvbjerg, 2006:224).

Historically, case study research was regarded as inferior to experiential research and considered only useful as an exploratory tool prior to commencing a proper study (Aitken, 2010). This notion has changed considerably – Flyvbjerg (2006), in particular, has put forth a coherent rebuttal against the accusations commonly levelled at case study research – as the understanding that case study research is a ‘research model that employs a number of methods’ (Aitken, 2010:89) rather than a method of data collection has gained traction. Topal (2009) describe a case study as an investigation of a phenomenon within its real-life context, reliant on multiple sources of evidence, and including events, individuals, and organisations, all of which are engaged with in this thesis.

A case study approach was taken here to provide the means for an in-depth exploration of how power operates within the EIA process by drawing on multiple document sources, individual's experiences and the relationships and networks between all of these. In particular, I used this approach to investigate the implications for the evolving relationship between the state, nature and society.

When deciding to use a single case, Yin emphasises the need to decide whether that case fits one of five rationales: critical, unique, representative, revelatory or longitudinal (Topal, 2009:47). I see the Bulga/Mt.Thorley-Warkworth mine extension as a longitudinal case, one from which a generalisation can be made because it is an exemplar of how power effects technologies of government and notions of citizenship across time for contentious developments. Thus, I selected a single case study design to provide an in-depth and unique understanding of the phenomena of power being studied in this thesis. My analysis of power within the EIA process can also be considered representative, in the sense that the power dynamics seen in this case study are very likely to be shown to exist within other planning processes involving contentious developments, as supported by other case studies in the literature (Devlin and Yap, 2008, Gibson, 2006, O'Faircheallaigh, 2015, O'Faircheallaigh, 1999) that suggest that power within the EIA process is part of a political process that forces communities to mobilise resources or bypass and/or supplement the legislative process by conducting their own EIA process. The community of Bulga is perhaps unique in that its demographic of well-educated retirees had both considerable knowledge that could be applied to analysing the EIS document and the free time in which to do so, attributes that are potentially likely to be absent from other communities in similar situations. The impact of

these attributes are such that the community of Bulga was likely able to understand and address issues of a scientific and technical nature within the EIS document that other communities might be unable to due to knowledge deficiencies and lack of time. This may have influenced the decision making in their favour at the L&EC, as they were able to provide a cogent and rigorous rebuttal to the DoPE's decision to approve the MTW expansion. Regardless, the community of Bulga's experience of the strategies of power deployed with the EIA process are likely to be experienced by other communities and as such, are generalizable to other communities own experiences.

3.3 The Bulga/Mt.Thorley-Warkworth mine extension

The selection of the Bulga/Mt.Thorley-Warkworth mine extension was intentional and, over time, proved to be extremely fortuitous. I initially selected the MTW mine extension because it had gone through several Planning Assessment Committee (PAC) hearings due to significant public opposition and then - the extension having been approved by the DoPE – the residents of Bulga had challenged the approval through a merits review at the L&EC. This challenge exploited an avenue for participation within the EIA process that was seldom used, although it was part of the formal participatory obligations within the process.

The result of this legal challenge saw the approval be dismissed by the Chief Justice. This had never before happened in the L&EC and is one of the reasons this case study can be considered an exemplar case. The response from the DoPE and Rio Tinto (the owner of the MTW mine) was as astonishing as it was quick. Together, the DoPE and Rio Tinto challenged the ruling at the Supreme Court, NSW. An amendment to the State Environmental Planning Policy (SEPP) [Mining, Petroleum Production and Extractive Industries] 2007 ('Significance of Resource') Clause 12AA, emphasising economic gain before all else when considering development

approvals was made concurrently and to be applied retroactively by the DoPE. The retroactive application of this SEPP amendment meant that Rio Tinto was able to get an immediate approval for an alternative, smaller extension plan that was submitted to the DoPE.

While the Supreme Court, NSW did rule in favour of the residents of Bulga by upholding the ruling of the L&EC, it appeared to be a pyrrhic victory, as with the SEPP amendment approval and the revocation of the public's ability to request a merit review of approvals through the L&EC, the MTW mine extension looked set to go ahead. The residents of Bulga did not accept this outcome and went on to employ participatory techniques outside of the formal avenues within the EIA process to delay the approval, push for more PAC hearings and an eventual revoking of the SEPP amendment itself.

This mix of government, community, participation rights and access spanning across time made the Bulga/MTW mine extension the best case for studying the effects of power in the EIA process. The iterative nature of the PAC hearings embedded within the EIA process and the ways in which the residents of Bulga have resisted decision outcomes afford an opportunity to examine how discourses evolve and transcend scale, and the influence of power on these processes and networks over time.

3.4 Methods of data collection and analysis

I employed a case study design using qualitative research methods. As a case study design justifies the use of multiple sources of data that may be subject to different forms of analysis (Aitken, 2010). I collected legislative, policy and other government documents; conducted interviews with the residents of Bulga and relevant legal figures involved in the EIA process; a focus group discussion with members of the BMPA; and collected correspondence documents

between all parties involved; PAC hearing submissions; and relevant media records, including social media, print, radio and television.

Contextual analysis was conducted on the relationship between the legislation, policy documents and amendments; correspondence and media data, and correlated to specific timelines in an attempt to determine whether events occurring ‘outside’ of the EIA process were influencing outcomes or directions. Critical discourse analysis was used in analysing the interview and focus group responses, as well as the PAC hearing submissions to illuminate power relations and the broader social realm in which the EIA process operates. My methods of analysis are described in more detail in part 3.6.

The wide spread use of these methods and sources provides a means by which I can triangulate data, as well as allowing me to “close in” on real-life situations and test views directly in relation to phenomena as they unfold in practice’ (Flyvbjerg, 2006:235). The methods and data obtained for this case study are described in the following sections.

3.4.1 Legislative, policy and other government documents

The legislative, policy and amendment documents used for analysis were all chosen based on their relevance to the EIA process and/or the MTW mine. Those selected include the following: State Environmental Planning Policy (SEPP) [Mining, Petroleum Production and Extractive Industries] 2007; Environmental Planning and Assessment Act 1979 (EPA Act); Environmental Biodiversity and Conservation Act 1999 (EPBC Act); State Environmental Planning Policy (SEPP) (State and Regional Development) 2011; and the Mining Act 1992. These documents explain how major developments are regarded by the NSW and Australian governments and the decision-making strategies employed when determining approvals. Additional documents

selected were those that made specific amendments to the legislation or policies just listed, in particular, the SEPP amendments, which played a pivotal role in the residents of Bulga's fight against the mine extension.

Documents collected and reviewed are shown in Table 3.1.

Table 3.1 Documents collected and reviewed

Legislative and Policy Documents	Significant Amendments to Current Legislation or Policy			
	State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) [Mining, Petroleum Production and Extractive Industries] 2007	State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Resource Significance) 2013 (Amendment SEPP) was published on 4 November	State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2014 ('Mining SEPP Amendments')	State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment 2015 ('Significance of resource')
Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment Amendment (Mining and Petroleum Development) Regulation 2014 (NSW) ('EP&A Amendments'), which amends the EP&A Act 1979 (NSW), Schedule 6A; and the EP&A Regulation 2000			
Environmental Biodiversity and Conservation Act 1999 (EPBC Act)				
State Environmental Planning Policy (State and Regional Development) 2011				
Mining Act 1992	Mining Amendment Act 2008 (MAA)	Mining Regulation 2010 (Regulation 2010)		

3.4.2 Interviews with the residents of Bulga

Interviews were conducted with those residents of Bulga who responded to an email requesting an interview (Table 3.2). In order to facilitate responses, I emailed the head of the Bulga Milbrodale Progress Association (BMPA), John Krey, requesting an interview and also, his good favour in forwarding the email on to anyone else in the community who would like to participate. Additionally, paper signs advertising for prospective interviewees were posted in the local hotel. The snowball sampling from John Krey resulted in my conducting interviews with eleven residents, nearly all of whom were directly involved in the BMPA.

John Krey played a pivotal role in introducing me to a number of important figures, documents and media reports throughout the research process. The BMPA president's assistance was instrumental in gaining an introduction and access to other residents, enabling the interviews to be undertaken. The names in the table are pseudonyms, as per the ethics requirement and information sheet provided to the study participants.

Table 3.2 Participant interviews with residents of Bulga (Pseudonyms used)

Participant	Who are they?	Date of Interview
Al	President, Bulga Milbrodale Progress Association (BMPA)	6 th October 2014/9 th September 2015
Jess	BMPA member and local resident	6 th October 2014/9 th September 2015
Rose	Local vineyard owner in Milbrodale	7 th October 2014
Lori	Secretary, BMPA	8 th October 2014
Glen	BMPA member and local resident	9 th October 2014
Sue	Local resident living close to MTW mine	9 th October 2014
Daisy	Local resident living close to Saddleback Ridge	9 th October 2014
Jack	Local resident living close to Saddleback Ridge	9 th October 2014

Ross	BMPA member, local resident and historian	10 th October 2014/9 th September 2015
Lily	BMPA member and local resident	10 th October 2014/9 th September 2015

3.4.3 Focus group and interviews

The focus group was conducted to discuss understandings of risk within the EIA process and to determine the residents of Bulga's self-described ability to participate within the EIA process. The focus group was a result of my asking the BMPA president if he would ask/email his contacts in the village of Bulga to see if anyone was willing to participate in a focus group discussing the EIA process. Here again, the BMPA president was key in facilitating my interaction with the community of Bulga and helping me build up what has become a significant relationship with members of the BMPA.

As there was a significant legal element to the Bulga story, I chose to request interviews with their legal team and the Chief Justice of the L&EC. Interviews with the head of the legal team from the EDO NSW and the Chief Justice of the L&EC were requested and agreed to by email. A semi-structured interview was conducted with both individuals and discussed the legal and legislative elements of the MTW mine expansion.

3.4.4 Documentary evidence

Correspondence documents for analysis were obtained from the BMPA, the EDONSW, the DoPE and the PAC committee. Those documents obtained from the DoPE and the PAC committee were available online on their websites, with the notable exception of one document from Rio Tinto to the Minister of Planning that was acquired through the Freedom of Information (FOI) process by the EDONSW. Correspondence from the BMPA and EDONSW was passed on to me via email. Correspondence documents obtained from these sources

include: letters, emails or memos from Rio Tinto to the DoPE; letters, emails or memos between Rio Tinto and the NSW Government; letters, emails from the NSW Government to the PAC committee; and letters, emails or memos from the BMPA requesting information or meetings with the DoPE or the PAC committee.

3.4.5 PAC hearing submissions/participant observations

PAC submissions were a particularly important part of my analysis as they represent a significant step in the EIA process. The change from a PAC meeting to a mandated PAC hearing (thus removing any opportunity for a merit review by the court) occurred in the early part of my research and I was unable to observe a PAC meeting to provide a comparison with the atmosphere of the PAC hearings. Submissions to the PAC hearings from all parties; including Environmental Non-government Organisations (ENGOS), grass roots community groups, health care providers as well as Rio Tinto, DoPE and the community of Bulga, were part of the analysis.

I chose to observe two PAC hearings; one in December 2014 and the other in September 2015. This was done to gain an understanding of the social dynamics of participants involved in the EIA process on all sides; proponent, government, and community. The length of time between observations was due to the PAC hearing scheduling, but did afford me the opportunity of a longitudinal analysis.

Table 3.3 PAC hearing observation details

Date	Type	Location
05/10/2011	Determination	Singleton Shire Council
04/12/2013	Determination	Singleton Shire Council
14/11/2014	Review	Singleton Shire Council
15/05/2015	Determination	Singleton Shire Council
17/08/2015	Review	Singleton Shire Council

3.4.6 FaceBook and webpages

As social media campaigns were used as part of the residents of Bulga's strategy to resist the MTW mine expansion, I chose to examine FaceBook pages belonging to the BMPA, Lock the Gate, and other ENGOS or community groups promoting Bulga's struggle against the extension approval. The members of the BMPA had also created a website: www.savebulga.org.au, which they used to promote events they held that were used to raise awareness of their battle against the extension. The website also provided links to the DoPE and the PAC websites, as well as links to key media reports they wished to promote. This website was also analysed along with the webpages of the DoPE; the PAC; and Rio Tinto's webpage dealing with the MTW mine.

3.4.7 Media (radio/print/television)

Media had been used extensively by the BMPA to promote awareness of the residents of Bulga's fight to preserve their community against Rio Tinto. The BMPA made use of multiple forms of media, including radio, television, newspapers, and magazines. Interviews with foreign and local media were undertaken and this global interest in the village's struggle against the mining giant, Rio Tinto, resulted in significant additional media exposure in NSW and Australia as a whole. Media elements analysed included radio interviews, television interviews, newspaper articles, television reports and magazine articles.

Items for analysis were each selected to address a particular line of inquiry relating to my research questions. As such, those media items relating to the two court cases deemed relevant to this case study were included in the analysis, as well as any media coverage of the NSW Government, DoPE and Rio Tinto's response to the court cases' outcomes and their own press releases relating to the court cases. Any reporting done on the SEPP (Mining, Petroleum

and Extractive Industries) 2007 (SEPP) amendments that happened during the course of my research was used, as these SEPP amendments were issued at particular moments during the EIA process and the timing of these suggested a political and economic motivation by the NSW Government and DoPE. Media items released by Rio Tinto or the NSW Government or DoPE concerning the MTW mine expansion were included to provide an understanding of how the NSW Government and its agencies viewed the MTW mine expansion in comparison to the village of Bulga. Media reporting on the village of Bulga in relation to the court cases, along with coverage of the BMPA's activities surrounding these court cases, such as organised protests and events held to raise awareness of the court cases themselves was included as part of the data to illuminate the ways in which the BMPA was creating spaces for participation and influence outside of the formal EIA process. Any comparison in the media of Bulga to other villages impacted by mines within the Upper Hunter Valley was selected to provide a basis to understand how the residents of Bulga construction of place might have led to the higher profile the village had created for itself in local, national and international media. Coverage by media outlets of the BMPA's and the village of Bulga's rallies, protests and organised tours to promote their cause was used to provide evidence for my analysis of the ways in which the village of Bulga presented its notion of place, and its significance in the context of a larger arena, to the wider world.

Media releases from ENGOs working alongside the BMPA, such as Lock the Gate, were selected for inclusion in the data set as a means to determine what environmental discourses; those of resistance or otherwise, were being employed by the BMPA and the community of Bulga in their struggle against the MTW mine expansion. These releases were also valuable in

my exploration of the ways in which the BMPA was able to employ a discourse across a multi-scalar arena.

3.5 Study limitations and the challenges of fieldwork

Initially, I had hoped to be able to interview relevant individuals from the DoPE and Rio Tinto to provide a complete picture of what and who was involved with the EIA process in NSW. I was thwarted in this by the refusal of the DoPE and Rio Tinto to meet with me at all. No explanation was ever provided, they simply did not respond to my requests for interviews or other documentation. This refusal required me to refocus my research on the residents of Bulga and their interactions with the EIA process and to rely on the official descriptions of the government and proponent roles provided in the legislation and policy governing the EIA process.

Reflexivity is always an issue when doing research (Malterud, 2001p. 483 -484). The researcher's innate perceptions can influence not only what information is collected but also the analysis. As stated at the beginning of this thesis, I confessed to taking a normative approach that views the EIA process as a political process with inherent strategies of power at play. Therefore, whilst I have allowed the data to reveal its own truths, my understanding and analysis of the data was, inevitably, influenced by my normative assumptions. To minimise this impact and ensure academic rigour, I have employed a triangulation method that seeks to re-enforce what is emerging from the data itself thus limiting the impact of my own reflexivity in my analysis.

As my research was examining power within the EIA process, I was able to contrast the official roles described for government and proponent in the policy and legislative documents with

the role formally provided for citizens. This enabled me to form an initial understanding of how the EIA process was structured and what role participation played within the overall structure. Based on correspondence documents concerning the DoPE, Rio Tinto and the residents of Bulga, I was able to extrapolate and gain a clearer understanding of how the DoPE and Rio Tinto operated within the EIA process along with the roles they saw themselves playing as part of this process. I was able to use this to inform my critical discourse analysis on how power was expressed and resisted within the EIA process.

The ongoing nature of the residents of Bulga's struggle against the MTW mine expansion made it difficult to decide when to stop data collection. As Bulga's fight continues even to date, I had initially made the decision to stop data collection after the reversal of the SEPP amendment came into play at the PAC hearing in September 2015. However, as the possibility for legal engagement was ruled out for the BMPA and Bulga community based on legislative changes to the offsets requirements, I decided to keep gathering data from online sources, like the Bulga website and FaceBook page, as well as media accounts. This decision was made because once the legal and legislative options were exhausted, the BMPA and Bulga community moved to take steps to oppose the MTW mine expansion through mild civil disobedience and protests. I was keen to see how this change in activity was reflected in the discourse created by the community of Bulga concerning their fight to save their homes.

3.6 Critical Discourse Analysis

A Foucauldian approach to discourse analysis holds that discourse is a culturally constructed representation of a current reality, and that discourses govern what is allowed to be said and is not, thus reproducing power and knowledge simultaneously. Discourse also determines

who can speak and what they are able to say, facilitating rules of inclusion/exclusion. In order to illuminate how power was circulating throughout those entities engaged within the MTW mine expansion EIA process, I turned Foucault's understanding of discourse into an analytic allowing the following questions to broadly guide my analysis.

1. What is being represented as a truth or social norm?
2. How is this being constructed and what evidence is being provided to support these claims?
3. What interests are being mobilised? Who do these interests serve?
4. What allowed this to happen?
5. What entities/actions are enabled/disallowed because of this truth?

Given the large volume of data generated by my case study, I chose to initially review all the data I had acquired with my main conceptual frames in mind and broadly code with the purpose of excluding those documents that were not relevant to my theoretical framing. I made this decision in order to remove those items that would not contribute to my analysis and to reduce the volume of data to a manageable level. I used NVIVO software to both organise and analyse my data, given the large volume of material collected.

In beginning my coding process, I repeatedly read through textual materials while employing my conceptual frames as broad codes. This allowed me to identify sources of data that addressed my research questions and also enabled me to explore this data for other emerging patterns. As pointed out by Braun and Clark (2006), theme development and revision, coupled with a rigorous process of data familiarisation and coding works to identify

patterns within the data, so I spent considerable time revisiting my data to gain an understanding of what might be emerging from it.

I chose to begin my analysis reviewing the interview transcripts and PAC submissions from the BMPA as these clearly reflected the Bulga community's personal experience of the EIA process. I explored these documents guided by my conceptual framework exploring governmentality and citizenship as discourses. Once I had determined that the initial codes I had generated were aligned with my research questions, I went back over this data to identify patterns of meaning that might be present and significant to my research questions. This data-driven coding identified patterns of meaning within the BMPA interviews and PAC submissions that revealed BMPA members' understanding of key concepts of citizenship, governance and environment within the EIA process. For example, under the node Citizenship, there was a sub-node Responsibilisation. This code arose as a dominant pattern from my data, in particular from the interviews and PAC submissions, but also on the social media sites and websites for the BMPA, Bulga community and even some of the ENGOs who became involved in the fight to stop the MTW mine expansion.

Using NVIVO, I explored what other broad themes came to light in my data and from these I identified additional key themes. A theme is something which captures the key idea about the data in relation to the research questions being asked, and which reveals some level of meaning or pattern within the data (Braun and Clarke, 2006 p.82). I chose to use an inductive approach in identifying my themes as I wanted to generate themes from patterns observed in the data. I did this iteratively, re-engaging with the data multiple times in order to ensure the authenticity of the data emerging. My preliminary analysis came up with 13

main categories, most with sub-categories such as personal life impacts, loss of sense of place, NIMBYism, and power that resists. NVIVO counts the number of times a source refers to a particular category or subcategory and therefore provides the researcher with an indication of their prevalence within the data set. This then enables the research to explore the significance of a theme in this context.

The categories were then aggregated and reduced to the six most referred to categories: technologies of government, scale, power, place, justice, citizenship. As an example, the theme on Citizenship was addressed by 43 sources. The overarching evidence suggests that the NSW Government is perceived as biased in favour of Rio Tinto, and fails to provide accountability to its own citizens, forcing them to take on the task of fighting against the MTW mine expansion that would destroy the village of Bulga. An example of the sub-categories supporting this conclusion are show in Table 3.4. A chart showing the relationship between the sub-categories falling under the main category of citizenship is shown in Figure 3.1.

Table 3.4 Theme explored: citizenship

Sub-Category used	Example from within my data
Responsibilisation	<i>These submissions for the six weeks is almost a fulltime job for me because you've got to take it; you've got to dissect it; you've got to select who you can get to help; then send it out to everybody; give them some guidelines on how they should write it...when it comes back in you've got to then go through and correct it and amend it to suit the same format as the rest of the report and then find out the big gaps in it. Al, personal interview October 2014</i>
Government Corruption	<i>...complaining to the Department of Planning and saying why aren't you doing something about this, this is just crazy? They suggested that we had an independent noise study, which of course was independent to the extent that it was paid for by the mines, commissioned by the mines and even at the scoping meeting that we had down at the clubhouse ...the guy who was going to be the principal conducting it was driven to the meeting by a mining person. So you know, absolutely in their pocket. Lori, personal interview October 2014</i>

Government Bias

The Department of Planning just basically rejected everything we said...The only source of information they've got is the government, Department of Planning and the mining company. They don't talk to us, they don't talk to anybody else. So we've got no show. Ross, personal interview, October 2014

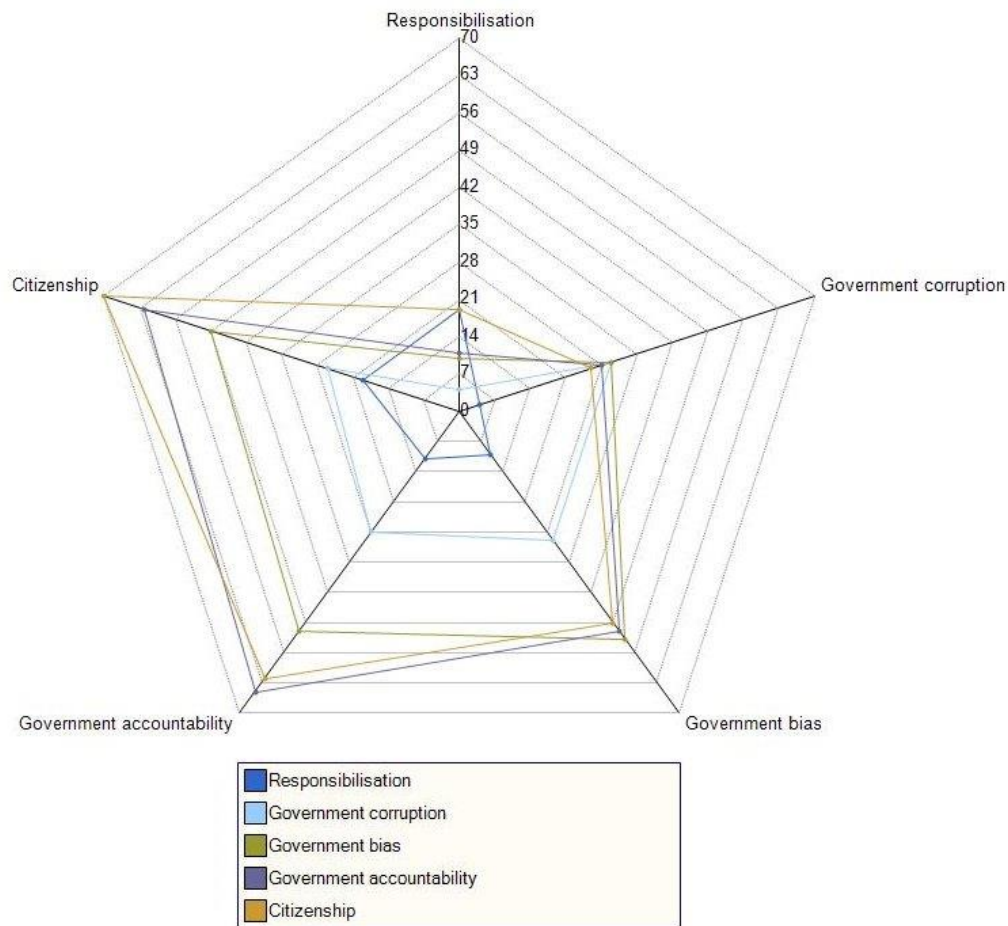


Figure 3.1 Relationship between sub-categories under citizenship node

In order to ensure rigour in my analysis, I recoded a random sample of my data manually and compared this with my NVIVO coding to ensure accuracy. Any discrepancies would have resulted in a recoding of the data and, if necessary a review of the themes. This approach was appropriate and provided the means to check the validity and trustworthiness of my analysis, as qualitative analysis is an iterative and recursive process (Braun and Clarke, 2006).

Chapter Four:

Environmental impact assessment

4.1 Introduction

The discrepancy between the wide-spread use of the EIA process and, in the main, its ineffectiveness in reducing impacts suggests an inherent weakness within the process itself which requires further exploration. This chapter begins that process of interrogation with a brief discussion of the history of the EIA process, and how it rose from humble beginnings to become a dominant instrument in government environmental policies globally. The next section (section two) follows this up with a general overview of the EIA process. In section three, I then provide a more specific examination of the uptake of the EIA process in Australia and its evolution over time. Section four explores how the EIA process in New South Wales operated, with a brief overview of the changes made to the EIA process between 2009 -2016 as this is the timeframe relevant to my case study. A more in-depth look at the changes to the NSW EIA process during 2009-2016 occurs in Chapter Eight; here I also unpack the consequences of these changes for my case study. Finally, I engage with the key themes in the scholarly literature around EIA and illuminate the political nature of the process through an examination of issues and concerns arising from the EIA process.

4.2 History of the EIA process

After the rapid industrialisation of the post-WWII years, the United States of America (USA) began to see an increase in the expression of public concerns about the environment. As an understanding of ecology as a concept became more well known to the general public, environmental concerns rose (Thomas, 2001). The publication of the book “Silent Spring’ by Rachel Carson in 1962 had raised public awareness of environmental issues, such as pollution, and there was a push for more accountability, and concern, in regard to the environment. Major infrastructure projects conducted by US Federal agencies that ignored environmental

impacts, along with frustration at US Government agencies working at cross-purposes, led to a push for better management and identification of such issues⁷. In response, the United States government, led by Senator Henry M. Jackson, introduced the National Environmental Policy Act of 1969 (NEPA). Jackson's goal was to force federal decision-makers to identify objects and conflicts prior to acting to ensure the broader environmental picture was taken into account⁸. The introduction of NEPA and within the act, the requirement for an Environmental Impact Statement (EIS) and, more significantly, public comment, revolutionised the planning landscape for major developments and provided environmentalists with an important tool with which to try to ensure environmental accountability and preservation.

NEPA and its recognition of the need for environmental as well as economic (cost-benefit) accountability led to it becoming the most widely adopted and influential environmental policy ever implemented (Cashmore, 2004). The introduction of NEPA in the USA led to many other countries and organisations incorporating some form of EIA processes into their own environmental or planning and development legislation. Australia introduced its own environmental assessment procedures at the federal level in 1974 (although NSW introduced their own version in 1972, making them the first non-US jurisdiction to do so (Harvey and Clarke, 2012)). The Organization for Economic Cooperation and Development (OECD) was the first international organization to incorporate EIA in 1974, and the United Nations

⁷ Senator Jackson noted that in regards to development of the Florida Everglades, the Interior Department and the National Park Service were trying to acquire the same land for conservation that the Army Corps and Department of Transport were trying to acquire for dam building and airport construction, respectively. <https://www.epa.gov/history>

⁸ Initially, NEPA only applied to the activities of US government agencies but it was later extended to cover the activities of any agency, public or private, proposing a major project with potential environmental impacts. <https://www.epa.gov/history>

Environmental Program (UNEP) adopted EIA in 1987. The EIA process is now routine in more than 100 countries and is used in everything from poverty reduction strategies through to government policies and local developments (Cashmore et al., 2008). The trend towards environmentalism and sustainability which began in the 1970s as the consequences of rapid industrialisation became apparent, along with the push towards a more democratic decision making tool for land use, are some of the reasons why uptake of the EIA process was so broadly adopted.

The rapid uptake of the EIA process across various countries reflects its considerable mobility with policy arenas. Policy mobility as a construct can be defined as 'a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place' (Dolowitz and Marsh, 1996 p.344). The basic premise on which the EIA process was based – that of reducing environmental impacts – was a concept that resonated globally at a time when the environmental impacts from major developments were becoming increasingly problematic for governments. Its introduction into development policy enabled governments to claim a legitimacy around their handling of environmental issues, with the EIA process acting as a technology of government that worked to define what was to be considered an impact based on science and expert knowledge (McCann, 2008). The EIA process allowed governments to introduce guidelines that governed which major developments were permitted, what impacts would be considered permissible and how such developments should be managed during construction, operation and closure.

As with all processes that give the appearance of working well and offer a government a means of suggesting legitimacy, the EIA process was incorporated as a component in environmental policy in many other countries. This is reflective of what Peck and Theodore (2010) refer to as the 'ideological anointing or sanctioning' of a policy that becomes mobilised. The nature of the EIA as a process made it very adaptable within different jurisdictions and this, along with its premise as an environmental protection, enabled it to be included as part of many countries environmental policies. It is commonly noted that processes and/or policies that affirm dominant paradigms and consolidate powerful interests are most like to become mobile and be taken up elsewhere (Peck and Theodore, 2010). This is true of the EIA process because its function as an environmental protection process ties in with the global swing towards environmental care, but it also remains a highly political process due to the vested interests of the companies and governments involved in major developments. Significantly, the wider political context in which the EIA process is situated seems to result in economic, social or political interests frequently superseding environmental considerations (See among others Cashmore and Axelsson, 2012, Cashmore et al., 2010, Richardson and Cashmore, 2011, Bojórquez-Tapia and García, 1998, Bonyhady and Macintosh, 2010).

As a part of environmental policy, the EIA process has been adapted to fit each individual country, but the basic premise and intent remains largely unchanged (Jay et al., 2007). This adaptability has seen the EIA process become part of environmental or planning legislation in around 100 countries worldwide, although the implementation varies considerably, ranging from mandatory requirements through to ad hoc processes (Harvey and Clarke, 2012). With the EIA process now in practice around the globe, a study by Agency and Sadler (1996), was conducted to determine the effectiveness of the process. The International Study on the

Effectiveness of Environmental Assessment was conducted between 1993-1996. Results from the International Study suggested issues with lack of coherent standards for quality performance and control, concerns about public involvement, and cumulative effects, among others (Agency and Sadler, 1996). This study and others have suggested that the overall impact of the EIA process on reducing environmental impact has been found wanting (Cashmore et al., 2004, Cashmore et al., 2010, Bonyhady and Macintosh, 2010). While this does not necessarily mean the EIA process is without merit, it does raise questions and suggests that its implementation and the political influences should be explored further.

4.2 EIA – a general overview

The EIA is a process designed to provide government decision makers with information in advance on the potential environmental impacts of a proposed development (Glasson et al., 2013). It is a regulatory process that involves the identification, prediction, evaluation and mitigation of environmental impacts associated with developments (Macintosh, 2010). The EIA process is designed to allow for public comment on projects, and as such can be considered an anticipatory, participatory process or environmental management tool (Jay et al., 2007). While it is often described as being used to assess proposed policies, programs, plans, actions and projects, it is most commonly used for projects (Harvey and Clarke, 2012). The EIA process operates as a series of steps to evaluate environmental consequences of a project in advance of its development (see Figure 4.1).

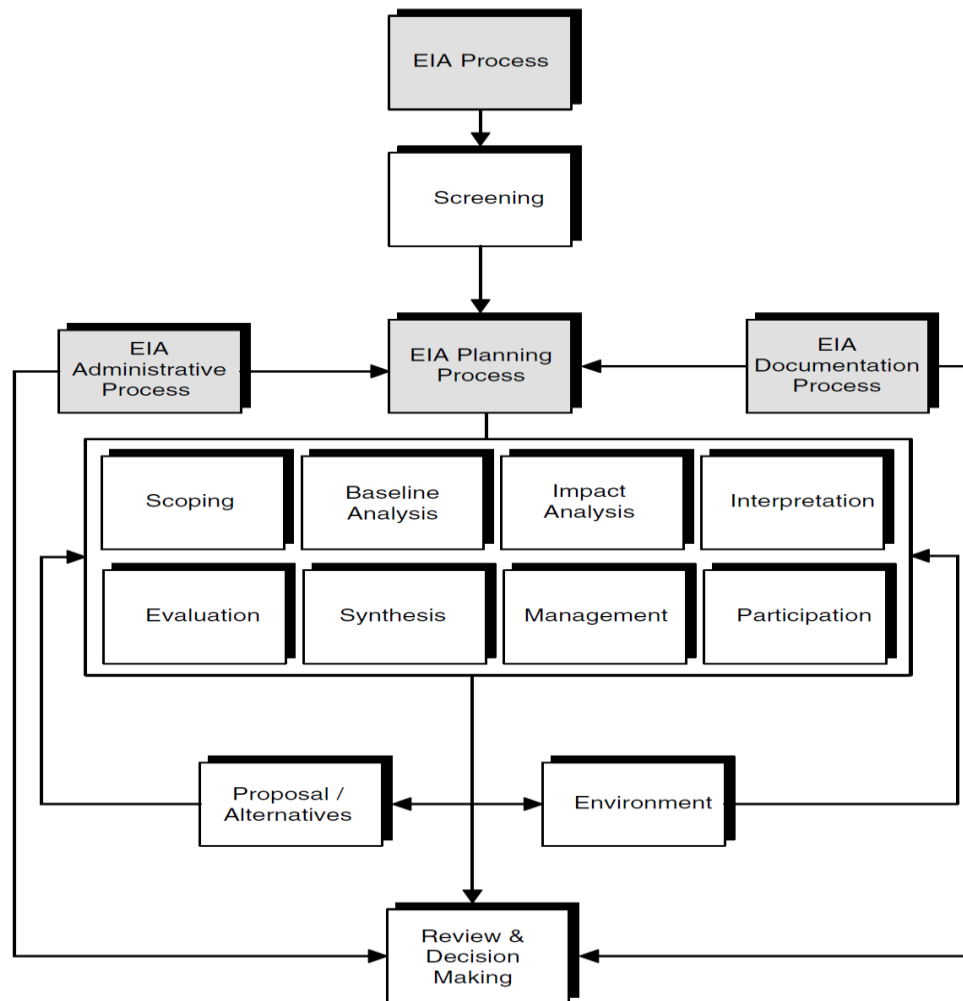


Figure 4.1 EIA Process (Glasson et al., 2013 p.14)

The basic steps in the EIA process can be described as follows (Harvey and Clarke, 2012):

- Screening – determines whether a projects requires an EIA
- Scoping – determines what the key impacts of the projects are likely to be, resulting in a Terms of Reference (TOR) document for the proponent to address
- Environmental Impact Statement (EIS) preparation: informed by the TOR, this document is the critical document used by the decision makers. It includes an executive summary, data on the environment likely to be affected, the predicted impacts of the development, mitigation or alternative steps that might be taken, the report’s authors and the sources of information

- Public participation: draft EIS is released to the public for review and comment, generally for between 30-60 days
- Proponent responds to public comments in their final EIS submission to the governmental agency responsible for decision making
- Review and decision making: the formal EIS review is conducted by appropriate government agency and a final decision is made
- Monitoring and Auditing: monitoring is conducted to determine whether the project is proceeding as required by the approval document. Auditing compares whether the anticipated impacts are actually the ones that occur.

The EIA process described is a standard one used by most jurisdictions; however it may be amended in some jurisdictions to allow for earlier public consultation, which would then work towards using best practice principles (Thomas, 2001, Glasson et al., 2013, Sadler et al., 1999). It may also allow for appeal rights, enabling communities affected by developments to use litigation to amend an approval decision. This is quite common in the USA but its availability varies within other countries and even within jurisdictions within the same country (Harvey and Clarke, 2012).

It is important to note that the EIS document for major projects usually runs to several thousands of pages in length, is comprised of many scientific and technical fields of knowledge and may take a year or more to put together. This becomes a very significant factor for communities and individuals attempting to engage with the EIA process on equal footing with the governments and proponents, as the timeframe for public review and technical nature of the EIS can work together to limit their ability to engage with the EIA process and influence

decision making outcomes. I discuss the impacts of this on my own case study community, Bulga, in Chapters Five and Six.

In recent years, there has been a significant increase in countries pushing for a streamlining of the EIA process in order to reduce time and costs (Bond et al., 2014). This has resulted in a rollback of environmental regulations, often with significant negative environmental outcomes as a result. For example, Gibson's (2012) examination of the effects of the Canadian government's changes to the Canadian Environmental Assessment Act 2012 (CEAA 2012) revealed that the streamlining efforts resulted in a significant decrease in the number of projects undergoing the federal EIA process (from 6000/year down to 20/year upon introduction of CEAA 2012). The reduction in the number of projects requiring EIA greatly increases the likelihood of negative impacts occurring during development. The CEAA 2012 also reduced the ability of the public to engage with the EIA process, on those now rare occasions it was required. Not only do fewer EIAs result in less opportunity for the public to engage but the timeline for EIAs has been restricted to a maximum of two years, leaving little time for the public to act. Further, the CEAA 2012 restricts engagement to the EIA process by limiting participating to 'interested parties'. An application to participate must also be made, to be adjudicated by one of three federal authorities, including the National Energy Board (NEB). Given the NEB's close engagement with the project proponents, it could be suggested that this represents a conflict of interest on the part of the federal government. Indeed, Gibson is of the opinion that the streamlining efforts by the Canadian government have resulted in the EIA process occurring too late to even qualify as an EIA process,

CEAA 2012 is clearly not designed to encourage early integration of environmental considerations in project planning. Instead, it positions assessment as a post-planning

regulatory hoop inevitably under pressure for speedy decisions that do not require substantial changes to established plans. (Gibson, 2012 p.12)

The discretionary powers now included in the CEAA 2012 that leave decision making on which projects require EIAs to a designated authority, along with the reduced requirement to gather environmental information on potential impacts only from designated areas, has resulted in a decrease in the ability of the EIA process to enhance environmental protection (Bond et al., 2014). In effect, the CEAA 2012 revision has seen the federal EIA process reduced in terms of its ability to link the broader environmental and developmental impacts, thus significantly reducing its effectiveness.

In the UK, streamlining efforts have seen the introduction of the Planning Act in 2008. This Act relocated the decision making authority for energy-related projects to a central decision making body removing responsibility from local councils (Bond et al., 2014). This has raised concerns that the local communities most affected by these developments now have less influence on if and how these projects are implemented. Additionally, in 2013 the British government mentioned plans to raise the screening thresholds for those projects required to undergo an EIA, thus reducing the number of developments subject to rigorous screening and management (Bond et al., 2014). Such actions reflect the trend seen globally to limit the potential impact of EIA on business interests.

In Australia, streamlining efforts have also been underway in an effort to reduce 'green tape'. I elaborate on these efforts in sections 4.3 and 4.4.

4.3 The EIA process in Australia

In Australia, the Federal Government introduced a legislated EIA in the Environmental Protection (Impact of Proposals) Act in 1976. The Australian States and Territories followed with their own EIA schemes between 1978 and 1991. However, overlapping jurisdiction led to legal disputes between the Federal and State/Territory Governments prompting the 1992 Intergovernmental Agreement on the Environment, which was the blueprint for the Environmental Protection and Biodiversity Conservation Act (Cth) (EPBC Act), passed in 1999. The EPBC Act was designed to divide responsibility for environmental matters between the Commonwealth government and the States and Territories, by limiting the Commonwealth role to certain matters of “national significance”, with each State and Territory adopting their own legislation and policies for all other aspects of environmental protection within their local jurisdiction. More specifically, the EPBC Act provided a legal framework to implement the Commonwealth’s obligations under a range of international environmental agreements and other matters outside the jurisdiction of the States and Territories.⁹ The principal matters designated for Commonwealth responsibility under the EPBC Act, are:

- world heritage properties (ss 12 and 15A)
- national heritage places (ss 15B and 15C)
- Ramsar wetlands (ss 16 and 17B)
- Listed nationally threatened ecological species and communities (ss 18 and 18A)
- Listed migratory species (ss 20 and 20A)
- Commonwealth marine areas (ss 23 and 24A)
- the Great Barrier Reef Marine Park (ss 24B and 24C)

⁹ <https://www.environment.gov.au/epbc>

- nuclear actions (including uranium mining) (ss 21A and 22A) and
- a water resource, in relation to coal seam gas and mining (ss 24D and 24E)

All proposed actions that might have a significant impact upon one of those Commonwealth designated matters (referred to as a controlled action under the Act) must be referred to the relevant Commonwealth Minister for consideration (ss 67 and 68). While the Australian Government must be consulted, over the past decade, steps have been taken to make the approvals process for major developments more streamlined. In the case where a development proposal requires an EIA at both the state and federal level (i.e. it will impact on a matter of national significance), the Australian Government has determined that where a State has achieved 'best practice' standard in their EIA process, then its assessment responsibility, and possibly approval responsibility, may be transferred to the State (Harvey and Clarke, 2012 p.63). Ostensibly, this has been done to avoid duplication of processes and ensure a more efficient assessment of development proposals; however, given the variability in the States and Territories EIA processes, questions have been raised about the viability of this, especially in the context of achieving good environmental outcomes. Macintosh notes that environmental groups and others believe this form of streamlining could lead to worsening environmental outcomes. Support for this can be seen in the fact that the State/Territory EIA processes have remained fundamentally the same, without the strengthening that was to arise from the reforms occurring due to the bilateral agreements (Macintosh, 2010 p, 408). More recently, since 2012 COAG has promoted the One Stop Shop scheme to enable bilateral agreements for both assessment and approval purposes (which means States and Territories can approve projects impacting upon international obligations). The potential implications of this are one of the reasons the One Stop Shop scheme is one of the current controversies around Australian EIA.

Another significant factor affecting changes to EIA in Australia is the inherent political nature of development approval processes, particularly within the resource extraction industry. I discuss this aspect in greater detail in the next section, with specific focus on the state of NSW.

4.4 The EIA process in New South Wales, Australia

As with the rest of Australia, the state of NSW has fluctuated between periods of strong and weak environmental regulation. In the last twenty years, the NSW Government has made numerous changes to the legislation and planning instruments, however, from 2005 onward there has been a focussed effort on reforms that facilitate development, with streamlining the development approval process, including EIA, at the top of the agenda. The focus on fast-tracking development approvals reflects the NSW Government's neo-liberal agenda which sees the economy linked directly to extensive development, in particular of natural resources. Table 4.1 below outlines some of the more significant legislative and planning instrument changes in NSW since 2005, with a focus on natural resource extraction reforms.

Table 4.1 NSW legislative and planning instrument changes 2005-2017

Year/Period	Reforms	Key reform documents	Key legislative changes
2005-2006	<i>Part 3A, EP&A Act; Standard Instrument LEP</i>	<i>Improving the NSW Planning System 2004</i>	<i>Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 (NSW); Standard Instrument (Local Environmental Plans) Order 2006</i>
2007-2008	<i>Housing, commercial and industrial development codes</i>	<i>Improving the NSW Planning System (2007)</i>	<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>
2009-2010	<i>Nation Building Economic Stimulus Package</i>	<i>Review of Implementation of the Nation Building and Jobs Plan (2010)</i>	<i>Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009 (NSW)</i>
2011-2013	<i>New Planning Act</i>	<i>The Way Ahead for Planning in NSW? Issues Paper (2011);</i>	<i>Planning Bill 2013 (NSW); State Environmental Planning Policy (Mining, Petroleum Production and</i>

		<i>The Way Ahead for Planning in NSW (2012); Green Paper – A New Planning System for NSW (2012); White Paper – A New Planning System for NSW (2013)</i>	<i>Extractive Industries) Amendment (Resource Significance) 2013</i>
2014-2015	<i>Streamline and Fast-tracking for development approvals</i>		<i>EPBC Amendment (Bilateral Agreement Implementation) 2014; State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 Mining & Petroleum Legislation Amendment Package 2015</i>
2016-2017	<i>New Planning Act</i>	<i>Environmental Impact Assessment Approval Project 2016; Community Consultative Committee Guidelines – State Significant Projects 2016; Draft EPA Act Amendment Bill 2017</i>	<i>Biodiversity Conservation Bill 2016</i>

For the purposes of this thesis, I will focus this section around a discussion of the legislation and planning instruments in NSW that govern the EIA process and its use in the extractive industry. In 1979, Environmental Planning and Assessment Act 1979 (EP&A Act) was enacted by the NSW Government. The EP&A Act 1979 was introduced in order to support the proper management of resources and protection of the environment; to promote sharing the responsibility of environmental planning between different levels of government; and to provide increased opportunities for public participation in environmental planning and assessment. It has been amended numerous times since then, with significant amendments for the extraction industry being the introduction of Part 3A 'Major Infrastructure and Other Projects' in 2005 (Harvey and Clarke, 2012) followed by its repeal in 2011, along with the introduction of the State Environmental Planning Policy (Mining, Petroleum and Extractive

Industries) 2007 (SEPP), initially introduced in 2005. Part 3A was known as the 'major projects law' and its main effect was to limit the number of projects from assessment requirements and approvals in an effort to streamline the approval process for major developments.¹⁰ While Part 3A was repealed in 2011, those projects that were initially operating under it continue to do so unless an additional approval is requested that requires significant changes, in which case they are governed by the EP&A Act and the SEPP 2007. The SEPP, has seen many amendments to it, the most crucial ones occurring in 2013 and 2015. In 2013, the NSW Minister for Planning introduced the requirement for decision makers to focus on the economic significance of the resource as a priority. There was considerable public outcry over this decision and in 2015 the SEPP was reverted back to its pre-2013 form with the removal of clause 12AA, which had prioritised the economic significance of the resource.

The EIA process in NSW follows the standard EIA process described above (see Figure 4.1) but does differ from it in several important ways. In NSW, the EIA process is conducted by the Department of Planning and Environment (DoPE). The governing agency administers the EIA process under planning law and development approval instead of environmental legislation or a stand-alone scheme, as is the case in other states (Gumley, 2015). While the standard public comment period is available, NSW goes further and, when a development is contentious or of great public interest, the public is afforded the opportunity to participate in a Planning and Assessment Committee (PAC) meeting or hearing. Here, they are able to present their concerns regarding a proposed development orally and in writing to a panel of independent experts.

¹⁰

https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/518/attachments/original/1430788793/Part_3A.pdf?1430788793

While the PAC meeting or hearing as a concept appears to encourage public engagement with the EIA process, in reality it is more of a tick-box exercise for the NSW Government, enabling them to point to public input into projects. Projects referred to the PAC for consideration might see the PAC committee make significant recommendations for mitigating impacts but they remain recommendations. Information on PAC recommendations and consequent adoption of these by the DoPE is not available on the PAC website.

Figure 4.2 below shows the NSW EIA process.

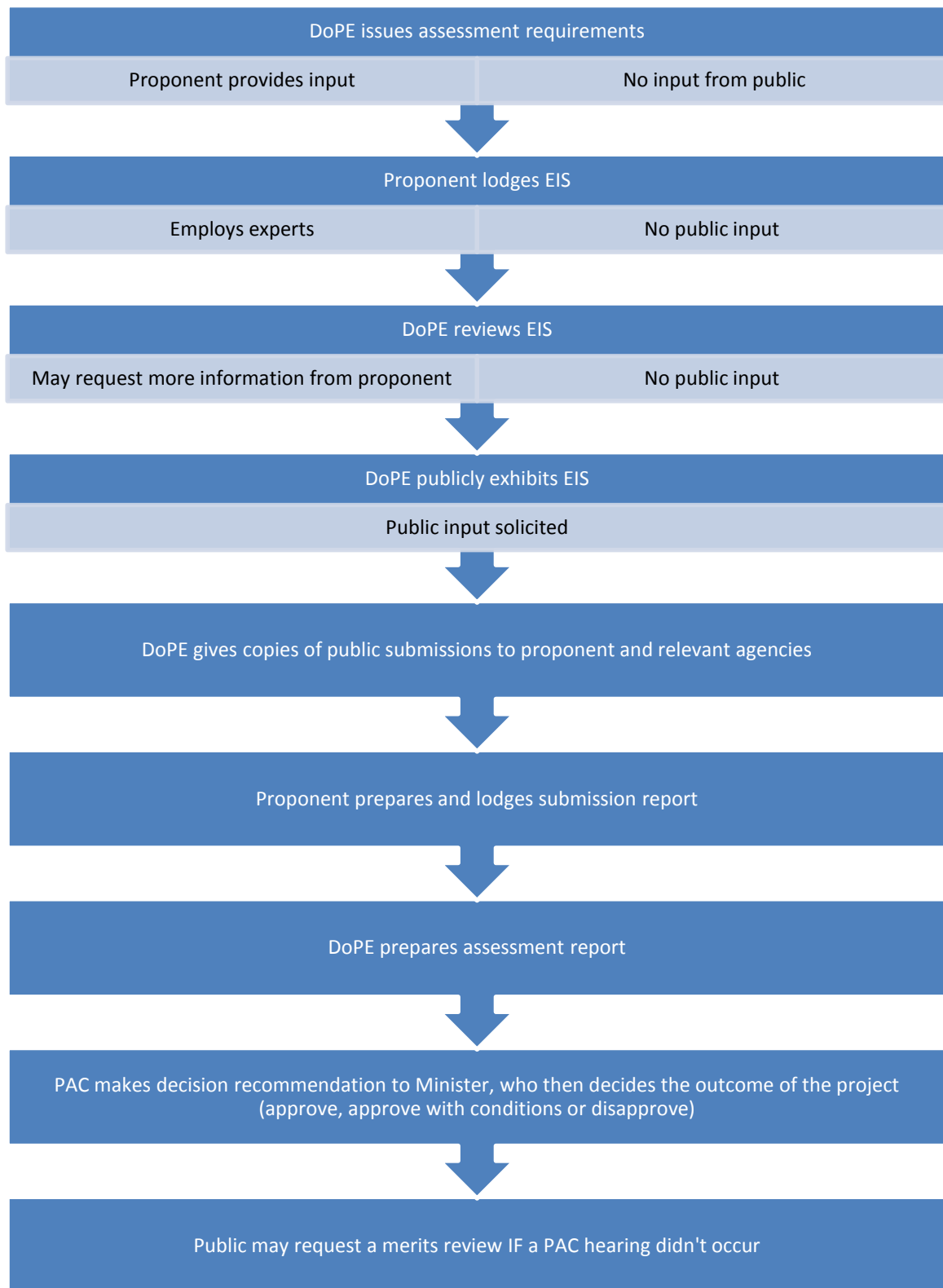


Figure 4.2 EIA process in NSW, Australia

4.5 EIA in practice: issues, concerns and critiques

The EIA process' existence since 1969 and its wide uptake globally has allowed many opportunities for a review of its efficacy. Academics in a variety of fields have taken up this challenge, employing case study research, among other forms, to explore the efficacy of the process. Research to date points to a process that doesn't achieve its full potential in reducing the impacts from significant developments, and several key issues have been identified and critiqued (See among many Bojórquez-Tapia and García, 1998, Devlin, 2006, Fiorino, 1990, Fitzpatrick and Sinclair, 2009, Lane, 2003, Cashmore et al., 2010, Richardson, 2005, Richardson and Cashmore, 2011, O'Faircheallaigh, 2010). These critiques explore either the problems with the EIA process itself or the effects on EIA of the political influence and tensions that often occur within development projects.

4.5.1 EIA issues – process concerns

There are two main streams of analysis in the literature regarding the issues with the EIA process. The first considers the technocratic issues with the process. These reflect the concerns with the EIS document and processes of the EIA, like the lack of information on cumulative effects, late engagement with the process, the lack of adequate consideration of mitigations and alternatives and insufficient baseline information to begin with (Devlin and Yap, 2008). Efforts to address these concerns have resulted in the creation of 'best practice' ideals for the EIA process. The International Association for Impact Assessment (IAIA) was formed in 1980 as a means of promoting best practice for EIA processes and has produced a set of guiding principles to improve practice and provide direction for EIA professionals (Harvey and Clarke, 2012). IAIA provides a list of 14 basic principles for EIA and also five operating principles to address when and how EIA should be applied (Sadler et al., 1999). Despite the influential role of the IAIA as an entity dedicated to improving the EIA process

worldwide, the literature is replete with critiques documenting the inability of the EIA process to effectively mitigate impacts (See among many Devlin and Yap, 2008, Devlin, 2006, Agency and Sadler, 1996, Cashmore et al., 2004, Richardson and Cashmore, 2011, Cashmore et al., 2008, Cashmore et al., 2010, Del Furia and Wallace-Jones, 2000). Cashmore et al. (2004) suggests that this reduced effectiveness within the EIA process is a result of the passive integration of the process within the decision making processes it is supposed to inform, and that while technical issues may be significant, it is more likely that the broader political and social arenas in which the EIA process operates are key. This passive integration of the EIA process within the broader decision making process can be seen in the low priority of the EIA process outcomes as mere recommendations which may or may not influence decision making (Gumley, 2015). The inability to force government decision makers to abide by the recommendations of the EIA process enables them to be outweighed by political and economic interests that may not be in line with promoting the sustainable development outcomes intended by the EIA process. This school of thought informs the second stream of analysis.

The second stream views the EIA process as a democratic arena and, as such, some of the main concerns centre around the public's ability to engage with and influence the EIA process, as well as the influence of the political and economic landscape on decision making outcomes (Devlin and Yap, 2008). These concerns may be seen as linked together because often it is the political nature of the EIA process itself that negatively affects the public's ability to engage with and influence decision making outcomes. This is to some degree ironic, as the public participation component of the EIA process was put in place to secure government accountability to its citizens.

Public concerns around land use development had required governments to provide a formal channel for these concerns to be expressed, considered, and acted upon. Indeed, as (Cashmore et al., 2004) note the creation of the EIA process itself arose from a political response to the upsurge in public concern over negative environmental impacts. This ability to be accountable to their citizens through the use of EIA is supposed to be one of the main draws for governments (Robinson, 1991) because it suggests a transparency in environmental decision making which may or may not be evident in practice.

Whether or not an individual or group is able to effect any changes to environmental decision making using the EIA process has been a point of much debate. The bulk of the literature suggests that public influence on development decision making is not enhanced by the EIA process (See Bojórquez-Tapia and García, 1998, Del Furia and Wallace-Jones, 2000, Petts, 2003, Aitken, 2010, Baker and McLelland, 2003, Devlin, 2006, Fiorino, 1990, Taylor, 2007, Head, 2007, O'Faircheallaigh, 2010, Stewart and Sinclair, 2007). This is less likely to be due to a restricted means of engagement with the process and more reflective of decision makers influenced by political and economic pressures. As such, the ability to hold the government and decision makers accountable is an imperative for ensuring decision making influence.

The publics' motives for participation within the EIA process differ from those of the government in that they are trying to influence a planning process whose outcome will likely impact on their own lives. Therefore, for the public, participation and accountability are important tools for leveraging power towards their own ends in the EIA process. Participation and accountability are often seen as linked, as the ability to participate is the way in which the public can work towards holding a government accountable for planning outcomes. The ways

and means through which they are able to hold the government accountable are dependent upon how the EIA process is enacted within a particular jurisdiction. In jurisdictions where public participation occurs too late in the process, or the community lacks the resources to dispute the scientific evidence proffered by the project proponents, the EIA process may be used in a tokenistic manner as a tick-box exercise, and there is often little value in public interaction with the formal EIA process (See for example Agency and Sadler, 1996, Arnstein, 1969, O'Faircheallaigh, 2010). Once the EIA process is complete and a project approval decision made, the accountability of decision makers will depend upon the appeal or review processes that may be available in each particular State or Territory. The Bulga residents were initially able to mount a successful review on the merits under NSW law, which set aside the original (defective) mine extension decision, only to see the goal posts shifted by retrospective changes the key criteria in the SEPP and circumvention of any further appeal rights. The inability to provide a planning system in which the public can meaningfully engage with and influence land use decision making outcomes, and fair appeal rights, leads to questions about a possible democratic deficit and suggests weak governance (Devlin, 2006, Swyngedouw, 1996). Devlin and Yap (2008) suggest that the politically contested domain of the EIA process is the significant factor in the marginalisation of public input and, consequently, public influence on decision making outcomes.

4.5.2 EIA issues – political concerns

The significance of the political arena in which the EIA process operates cannot be understated. Even in jurisdictions with strong environmental legislation, decision making outcomes are seen as being more influenced by political purpose (Swyngedouw, 2005). Attempts to explore this phenomenon have begun to focus on the effects of power with the EIA process. Richardson (2005), Cashmore and Axelsson (2012) and others have unpacked the

influence of power on environmental decision making outcomes within the EIA process. Richardson (2005) notes in his analysis of four case studies using the EIA process, that political influences were highly significant in determining decision making outcomes. In his analysis, Richardson notes that “one situation in which the information introduced into the EA is conditioned by power is the simple case where momentum and political support already exists for a particular project or plan outcome.” (Richardson, 2005 p.352). The predetermined motivations for a particular decision outcome are often driven by outside interests that are linked to a wider political landscape. In many instances, the political influence is reflected in the approval of projects that are economically advantageous for the state. This is particularly apparent in development approvals for resource extraction developments which have high environmental impacts but which provide considerable royalties to the state (Perreault, 2006, Bojórquez-Tapia and García, 1998, Bonyhady and Macintosh, 2010, Richardson, 2005). Importantly, as the proponent is instructed by the relevant government body to provide the information required for the EIS, the proponent is then able to control what information is included and thus able to conceal or misrepresent information that might be detrimental to the proponent’s own development interests.

The prioritisation of economic gains over deleterious environmental impacts reflects not only the neo-liberal economic focus of the State but further implies the possibility of regulatory capture. Regulatory capture of governments by multi-national corporations is not a new phenomenon and is particularly prevalent within the extractive industries. ‘Capture theory’ recognises two forms of regulatory capture: systemic and agency (Briody and Prenzler, 1998). Systemic capture describes the capture of the entire regulatory system by the regulated industry, a common example of which is the ‘revolving door’ scenario where government

employees go to work for the agency they were regulating. Agency capture occurs when the agency tries to appease strong interest groups that have significant influence over the agency's masters (Briody and Prenzler, 1998 p.55). It is interesting to note that the extractive industry in Australia often employs both forms of capture to ensure political and decision making outcomes in their favour; I describe this in greater detail in Chapter Eight.

Additional political influence on EIAs has been shown to result from particular cultural practices as well. As described in Chapter Two, Agrawal (2005a) illuminated the way in which the Indian Government worked to combat the riots occurring over restrictions to local communities traditional use of forests. In order to stop cultural practices that were damaging the forests potential for economic gain, the Indian Government chose to devolve management of the forests down to the local communities, in the process resolving the issues with rioting through the inculcation in these communities a subjectivity that favoured environmental citizenship. Given that cultural practices are embedded in the political structure of countries, it is important to understand what the linked nature of politics and culture might have on how EIA processes are operationalized within a country. For instance, Richardson and Cashmore (2011) analysed the World Bank's attempt to introduce 'good governance' in EA into planning legislation in Bangladesh. Their study exposed the nature of bribery expected by officials to facilitate the implementation of EA processes. In neglecting to take into account the political culture within which bribery was a deeply entrenched element, the World Bank failed to create the shift towards 'good governance' they were striving towards, showing that

This leads to a revealing account of how a strategy to destabilise what were viewed by the WB as undesirable forms of government, and to replace them with a new logic of governing may not succeed (at least in the short term), even when pursued by what is

often regarded as an overwhelmingly dominant actor. (Richardson and Cashmore, 2011 p.106)

In their conclusion, Richardson and Cashmore (2011) suggest that the culturally understood and accepted notion of corruption in Bangladesh is very different to that of the World Bank's and is not necessarily thought to be a negative. They raise the question of cultural appropriateness when instituting 'good governance' models, given the explicitly political nature of EA as noted by many scholars (O'Faircheallaigh, 2009, Richardson, 2005, Bonyhady and Macintosh, 2010).

The political nature of the EIA process can be recognized as not only influential in decision making outcomes but, in fact, a major driver of environmental planning and development decision making.

4.6 Conclusion

The critiques of the EIA process currently discussed in the literature speak to the broader problem of the highly political nature of the EIA process itself. While the 'dot-points' of the EIA process appear to address potential environmental concerns adequately, in reality, they are easily manipulated or by-passed by governments and officials with vested interests in getting a project approved, whether driven by economic gain or personal benefits. In NSW, the political nature of the EIA process has been revealed through almost constant legislative changes designed to ensure development approvals (see Chapter Eight for an in-depth discussion), as well as legal challenges and appeals over developments, often involving the NSW Government itself. The nature of the EIA process as political and driven by the vested interests of the proponent and government transforms it into a vehicle for development approval, rather than a tool to enhance the environmental sustainability of a project. Public

input, while allowed, remains ineffectual as the very nature of the EIA process works against any true influence or input by those without the necessary resources to engage. Over-reliance upon evidence from project proponents, limited times for public comment, the length and complexity of the EIS and the inability to provide input during the scoping stage reduce public engagement to a tokenistic exercise available only to present the appearance of government accountability and legitimacy.

My case study's exploration of the MTW mine expansion highlights the role of politics in decision making outcomes in the NSW EIA process. In Chapter Eight, I engage with the concept of governmentality discussed in Chapter Two to unpack how politics in NSW influences and determines development approval.

Chapter Five:

“How corrupt is that?”

**Engagement with the environmental impact
assessment process explored through the
experience of the residents of Bulga, NSW**

5.1 Introduction

This chapter explores the experience of the residents of Bulga, NSW as they engaged with the EIA process with the goal of preventing the extension of the MTW coal mine. It describes the community of Bulga and explains why they are concerned about the MTW mine expansion. The significance of the unique composition of Bulga's community group, the BMPA, and its role in the community's engagement within the EIA process is unpacked. A timeline of engagement within the formal avenues afforded in the EIA process, and the Bulga community's informal engagement with it, leads on to an exploration of who, in terms of EIA engagement, are the key Bulga residents. I then go on to explore how these key residents operate in the landscape of their community within their roles as members of the BMPA and why they chose to engage with the EIA process for MTW mine. The dominant themes falling out of these resident's stories are addressed and linked to their experience of engagement within the EIA process for the MTW mine expansion.

5.2 Who is the Bulga community and why were they concerned about the mine expansion?

The Upper Hunter Valley (UHV), in NSW, Australia is a conflicted location. From the original appropriation of land from Indigenous traditional owners, to the vineyards, stud farms and coal mines that co-exist uneasily with one another today, it has long been the site of fiercely fought struggles over land use, ownership and understandings of place. The village of Bulga is situated within this contested landscape, and its residents are engaged in a fierce battle to prevent the destruction of their home and its history from the expansion of MTW mine.

The original Aboriginal owners of the land, the Wonarrua, experienced incursions by colonial settlers onto their ancestral lands from the earliest days of colonisation by the British. Situated in the UHV, their ancestral lands spread from near what is now Maitland west toward the Great Dividing Range and Wollombi. In 1826, the Wonnarua launched a series of attacks against the settlers on their lands in what has become known as the Wonnarua Uprising of 1826. Military forces were sent from Sydney to deal with the uprising and the Wonnarua were defeated¹¹. Throughout the 1800s, warfare between the Wonnarua and the British settlers continued sporadically as more and more land was appropriated from the Wonnarua tribe and they became increasingly dispossessed¹².

Shortly before the Wonnarua Uprising, in 1820, the village of Bulga was established by early British settlers arriving in the area. It sits in a picturesque location, surrounded by lush vineyards, sheer cliff-faces of exposed rock and rolling farmland. Bulga has grown from a small farming community into a larger, more diverse community as more people chose to live there, either through retirement or to work at the larger towns nearby. Today, the village of approximately 400 residents is comprised of a police station, historic scout hall, historic church, recreational grounds, a small hotel, service station, community hall and a pub. It is the regional headquarters for the Rural Fire Service and home to the Hunter Valley RFS Helicopter Base and the National Parks and Wildlife Services offices. Bulga's local pub, the famous Cockfighter Tavern, forms a central hub where locals gather.

¹¹ <http://wonnarua.org.au/images/Boundaries%20of%20the%20hunter%20valley%20aboriginal%20people.pdf>

¹² <http://wonnarua.org.au/images/Boundaries%20of%20the%20hunter%20valley%20aboriginal%20people.pdf>



Figure 5.1 The famous Cockfighter Tavern in Bulga (photo author)

A self-described close knit community, Bulga is comprised of a mix of long time locals, retirees from urban centres, miners and other tradespeople. As of 2011, 20.1% identified as machinery operators & drivers, 18.4% as technicians & trades workers, 14.5% as labourers, 12.3% as professionals, 10.1% as managers, 8.9% as clerical & administrative workers, 6.7% as sales workers, 5.6% as community & personal service workers, and 3.4% as occupation inadequately described/ not stated.¹³ The demographic profile reveals the village to have more than 43% of locals being over the age of 45 years and 27.4% over the age of 55 years¹⁴. Of those over 55 years of age, a significant proportion are retired; indeed, many of these individuals relocated to Bulga from metropolitan areas within NSW. The presence of a significant number of older retirees within the community was to prove very significant, as

¹³ <http://bulga.localstats.com.au/demographics/nsw/hunter-valley/upper-hunter-valley/bulga>

¹⁴ <http://bulga.localstats.com.au/population/nsw/hunter-valley/upper-hunter-valley/bulga>

they brought with them knowledge and skills from many different fields of work, a large number of which were very useful in facilitating engagement with the EIA process. For instance, one resident was a retired quantity surveyor, another had a background in maths and physics, and yet another was a local historian with long family ties to the village.

In November of 1983, the local community had formed the Bulga Milbrodale Progress Association (BMPA), to address local concerns and to represent the village residents on a range of issues of local concern such as air quality and noise pollution (for more on the BMPA, please see section 5.3.1). In 2009, after an initial meeting to discuss Rio Tinto's application for another MTW extension, a sub-committee of the BMPA (still referred to as the BMPA) was formed. This was led by a group of older professional retirees and was to become a critical actor in the battle to save Bulga from the further expansion of the nearby MTW coal mine. The skill sets and expertise they brought to bear in the fight against the extension allowed them to exploit every avenue available to them in the EIA process in the village's struggle to prevent the MTW open cut coal mine, owned by Rio Tinto, from extending to within 2600 metres of the village, destroying local landmarks, significant ecologies and the residents' quality of life in the process.

While an earlier extension in 2003 of MTW coal mine had been largely accepted and unremarked upon by the community, the 2010 application for a further extension alarmed Bulga residents and led to 72 individuals from the community objecting to the extension. Overall, 102 submissions were made to the PAC and of these 101 were objections to the MTW expansion. The BMPA submitted one objection on behalf of the Bulga community as a whole, and, individually, each of the members of the special sub-committee also filed an objection

against the MTW expansion. There were many reasons for this objection, but the primary ones were the reversing of Rio Tinto's promises to protect particular landmarks and ecosystems, and anticipated health impacts from noise and dust. Additionally, the residents of Bulga felt that these impacts could result in the total loss of the village itself. The fear of the complete destruction of the village of Bulga was not far-fetched as several other villages located in the Upper Hunter Valley had either been abandoned due to the encroachment of coal mines – Ravenhurst and Warkworth – or were hanging on by a thread - Camberwell. This possibility, along with the financial ruin for many that would occur should Bulga suffer the same fate, was more than adequate motivation to get the residents of Bulga participating in the EIA process for the MTW coal mine extension.

While most of the residents of Bulga engaged with the EIA process at a basic level, such as sending letters of objection and in some cases speaking directly with the Planning and Assessment Committee (PAC) panel members– the BMPA sub-committee was much more involved. The BMPA sub-committee's older, well-educated retiree population had the time, expertise and the ability to mobilise and acquire the resources necessary to engage with the EIA process. Reflecting on this unique circumstance – a perfect storm of skills – one member of the BMPA stated.

I think they did underestimate Bulga because originally they did tell us absolute bullshit. They were reading from the song sheet that they'd produced 20 years ago which was for country hicks that don't understand all this stuff. It was only when we started to be seriously affected and there were sufficient, as you say, educated people in the community to say hang on a minute, I'm going to look into this, that we got to the point that we did...If you had a community where you didn't have those sorts of people - and I think that is what happened to the communities that have gone and is still happening, say, to Camberwell¹⁵ but certainly happened to the ones that have gone, because they were just taking on people who didn't have that sort of background. So even if they can access the documents, they can't understand them, so how can you fight something that

¹⁵ Camberwell is located in the Upper Hunter Valley, NSW. It is approximately 34 km northeast of Bulga.

they're telling you it's black and you think it's not but you can't prove it. (*Lori, personal interview October 2014*)

The previous extension in 2003 had seen Rio Tinto agree to protect the ecologically unique Warkworth Sand Woods (WSW) in perpetuity as conservation land through a Ministerial Deed of Agreement issued by the DoPE. It was to have been registered with Singleton Council by Rio Tinto in order to ensure its conservation status. Rio Tinto had further agreed to protect two particularly significant landmarks for Bulga: Saddle Ridge and Wallaby-Scrub Road. Saddle Ridge was significant for Bulga as it provided both visual and acoustic protection from the MTW coal mine. The Wallaby-Scrub Road forms part of the historic Great North Road and, as such, was a significant part of the history of Bulga and its surrounding environs. Additional areas of ecological significance had also been agreed upon as Non-Development Areas (NDAs). At the time of the 2003 extension application, coal prices were low and these areas had been deemed economically unviable to mine by Rio Tinto. This was not the case in late 2009. Coal prices had rocketed up to all-time highs, driven by demand from China and other developing nations. The MTW coal mine had been operating on a 24 hour – 7 days a week schedule since the rise in coal price. Suddenly, the uneconomical areas they had previously agreed to preserve were looking very economical and Rio Tinto was now insisting that these areas must be mined in order to extract the now-economically viable coal. In order to mine them, Rio Tinto applied for a further extension to the MTW mine, this time including the areas they had previously agreed to protect. In the 2003 extension application, these areas had either been designated as Non-Development Areas (NDAs) or, in the case of Warkworth Sand Woods and Saddleback Ridge, had been protected by a Ministerial Deed of Agreement.

Rio Tinto's application for a further extension did not go down well with the residents of Bulga, who had been counting on those previous guarantees to protect them from the impacts of the mine. At the previously mentioned village meeting held in August of 2009, 80 local residents attended to discuss the new extension proposal. The initial response from the residents was mixed; some thought a win against Rio Tinto wouldn't be possible and others wanted to fight. A local resident, Al, described the meeting.

At that public meeting the general consensus at the outset of the meeting was you can't win, let's just try and do the best deal we can. We've tried to beat these guys before, you can't win. I was horrified at that. I thought I've come all this way up here, I'm building a house and everyone's tossing in the towel - not everyone but a large group of them. (Al, *personal interview October 2014*)

As the discussion progressed, the focus shifted to fighting the extension.

So I protested. I said look no if you want to go into a negotiation and, firstly, most of the people in this room want to stop the mine, a lot of you want to go and negotiate the best deal you can, if you go on that basis you won't stop the mine. I believe we should be able to stop the mine. No, no, no. Anyway by the end of the night everyone agreed, it was unanimous, we set out to stop the mine. No better conditions or deals, we stop the mine, and that's been our catch cry ever since. (Al, *personal interview October 2014*)

The change in the application for extension made by Rio Tinto to include areas previously protected was pivotal in motivating the community of Bulga to fight MTW expansion. Residents felt betrayed by the suggested changes, especially as these changes meant that the Ministerial Deed of Agreement was being ignored. This Deed was rendered invalid, according to the NSW government, because Rio Tinto hadn't registered it with Singleton Council as they were required to do under the Agreement. This meant it could now be rescinded as the protection it was supposed to ensure had not been applied to the designated areas, therefore these areas were now available to be included in the new extension application. Community members felt that the NSW government was not acting in the best interests of their Australian electorate, but instead was focused on the interests of Rio Tinto, a foreign-owned

multinational company. These feelings of betrayal were described by a member of the BMPA, Ross.

The government is going by the planning department who is, in particular, going out of its way to assist the mines. It voluntarily joined the mining company in the appeal against our land environment court win. They voluntarily went in with the mine. They weren't summonsed or they weren't - what's the word? ...They didn't have to be there but they did. So you could see where their allegiance was - with the big mining companies. (Ross, personal interview October 2014)

A more detailed examination of the NSW government's interaction with the EIA process, Bulga residents and Rio Tinto will occur in Chapter Eight.

5.3 Engaging with the formal channels for predication in the MTW extension EIA – a timeline of Bulga's formal engagement in EIA process for MTW coal mine

The impetus for the residents of Bulga to engage with the EIA process came from the proposed reversals and changes to offsets and NDAs previously agreed upon in the 2003 extension proposal for the MTW mine. The timeline for the BMPA's formal and informal engagement with EIA process can be seen in Figure 5.4 (located at the end of this chapter). In August 2009, Rio Tinto met with Bulga residents to discuss the expansion plans for MTW. The residents found these meetings unproductive, for reasons described by BMPA member, Al.

Yeah they put it in the paper and they also had what they called community - not consultations because they never consult. All they do is say well this is what we're going to do, that's what we're going to do and this is how it will impact you. Now after that first session - I think they had two sessions - but the bottom line was they never changed anything from anything that we had said. (Al, personal interview October 2014)

In early 2010, Rio Tinto lodged an application for the *Warkworth Extension Project*, proposing to open cut mine through Saddle Ridge and the Warkworth Sands Woodland, towards the village of Bulga (Figure 5.2 below and Figure 5.4).

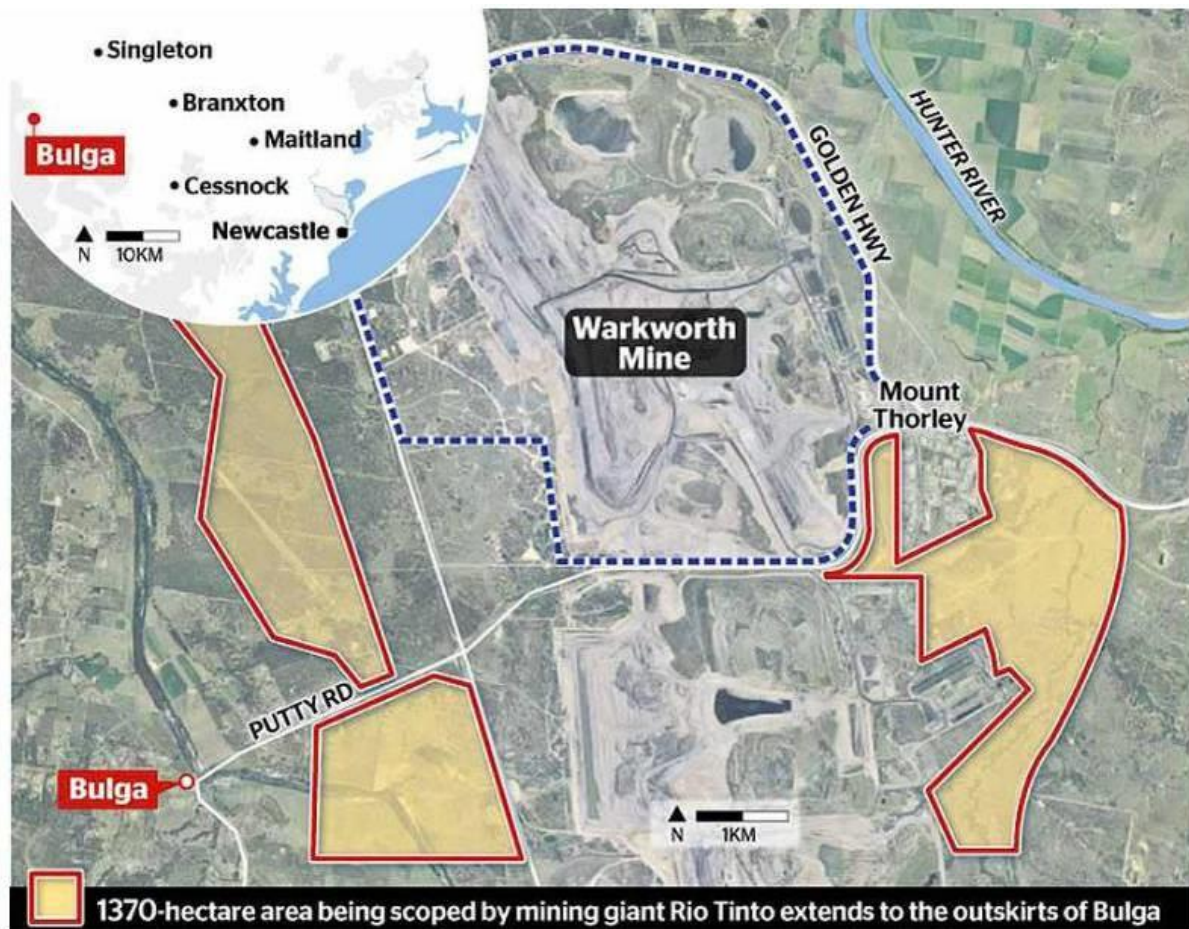


Figure 5.2 Rio Tinto's proposed MTW mine expansion plans¹⁶

In order to attempt to interact with the EIA process on equal footing, the BMPA members solicited funds from Rio Tinto, citing an example in Northern Canada¹⁷ where funding was provided to a community to hire their own consultants and experts. Rio Tinto eventually agreed and provided \$40,000 Australian dollars in funding to the BMPA. The BMPA used a portion of this money to employ four experts to provide reports on air and water quality, noise issues and ecology.

¹⁶ <http://www.theherald.com.au/story/3021150/rio-tinto-plans-pose-new-threat-to-bulga/>

¹⁷ http://www.riotinto.com/documents/Rio_Tinto_Why_Agreements_Matter.pdf

In April 2010, Rio Tinto released the draft copy of the EIS document for public review and comment (Figure 5.4). The BMPA members each selected a section of the EIS to review and went on to submit their own objections and comments with those of the consultants. In November 2011, after months of Rio Tinto reviewing and responding to public comments, the NSW Department of Planning and Environment (DoPE) held a Planning Assessment Committee (PAC) meeting to address public concerns about the MTW mine extension (Figure 5.4). Local residents and people from the surrounding region who were for or against the MTW extension presented to the PAC panel and in February 2012, despite the significant number of submissions objecting to the project, the MTW extension was approved (Figure 5.4). In March 2012, frustrated at what they saw as a biased process, the BMPA lodged a merits appeal in the NSW Land and Environment Court (L&EC). Merit review was still an option at this point in time because the PAC committee had held a meeting and not a hearing. Following the success of the BMPA at the L&EC, the NSW government mandated that the PAC committees must hold hearings, as the legislation disallowed a merit appeal should a hearing have been held. Merit review afforded communities the opportunity to have a development approval reviewed and potentially overturned. A more detailed explanation of merit review and the relevant legislation was provided in Chapter Four and will be reviewed again in Chapter Eight. The case was heard over September and October 2012 by Chief Justice Brian Preston. In April 2013, the L&EC overturned the approval of the MTW mine extension, judging that the impacts of the project on biodiversity and the community of Bulga would outweigh any benefits it would bring to NSW (Figure 5.4). The decision was immediately appealed to the NSW Court of Appeal by Rio Tinto, with the DoPE joining the appeal a week later. The appeal was heard in September and October 2013.

Just prior to the hearing for the appeal, NSW Mining Minister Chris Hartcher altered the State Environmental Planning Policy (SEPP) [Mining, Petroleum Production and Extractive Industries] 2007 and made the 'economic significance' of a resource the primary consideration when deciding on mining approvals (Figure 5.4). The change came into effect in November 2013 when Rio Tinto also lodged an application for Modification 6 of the previous MTW approval. This allowed them to mine into a section of Saddle Ridge. The modification was approved by the NSW DoPE in January 2014.

In April 2014, Rio Tinto submitted a new application for the MTW mine extension. The extension covered the same areas as the previous one deemed to have unacceptable impacts by the L&EC. On the 7th April, the NSW Supreme Court upheld the Land and Environment court ruling against the mine expansion. In October 2014, the NSW government created the NSW Biodiversity Offsets Policy for Major Developments (Offsets Policy) which removed the need for the biodiversity offsets for mines to be comprised of the same ecological community or species that would be impacted by mining the area (aka 'like for like'). This then meant that the clearing of the Warkworth Sand Woodland (WSW) would not require an equivalent offset, thereby allowing Rio Tinto a means to offset its loss, something they would have struggled to accomplish otherwise. Following quickly on the heels of the Offsets Policy, the NSW Office of Environment and Heritage (OEH) granted biodiversity certification for the MTW extension, concluding that the biodiversity offsets selected were adequate under the new policies. A change in NSW government saw the retraction of the 'resource significance' clause in the Mining SEPP in July 2015, and another PAC hearing was convened. As it was a hearing, there was no possibility of another merit review. In November 2015, after a high-profile campaign by the community of Bulga and thousands of submissions against the extension, the project

was again approved by the PAC (Figure 5.4). It remains functionally the same project that was rejected by the L&EC in 2013.

The BMPA decided in early 2016 to file in the L&EC for a judicial review of the new approval. A judicial review is restricted to administrative points of law; it cannot argue the merits or impacts of a mine approval. By May 2016, having been advised by their legal team that they were unlikely to win their case, the BMPA chose to drop their case against Rio Tinto and the NSW government. There is no longer any legal option available to them. Bulga residents are now engaging in mild forms of civil disobedience, such as protests and sit-ins.

To protest the proposed closure and destruction of Wallaby Scrub Rd for the expansion of Rio Tinto's Warkworth coal mine. The horse riders will carry a petition to the state government calling for the road to stay open, and the demonstration will mark the beginning of the petition's journey to NSW Parliament.

The horseback protest has been organised by supporters of the "Stand with Bulga" vigil, a peaceful protest on Wallaby Scrub Road that has taken place every day since 15th July. In the first week of the vigil, Wonnarua traditional owner Kevin Taggart and his sister Pat Hansson were arrested by police for refusing to move on to allow Rio Tinto to carry out blasting for its coal mine.¹⁸

A discussion addressing the political issues inherent in the EIA process will be undertaken in Chapter Eight.

5.4 Who are the key residents in Bulga who engaged with the EIA process for the MTW coal mine extension?

The ways in which the BMPA has engaged with the EIA process have been both prescriptive and rebellious. They have worked inside the formal avenues afforded them for participation within the EIA process but have also created informal avenues with which to engage this

¹⁸ <http://www.savebulga.org.au/saturday-actions-gloucester-bulga/>

process from outside its prescriptive channels. What remains constant in both these scenarios is the way in which the BMPA and other residents of Bulga must contribute their own time and other resources in order to engage with the EIA process in an attempt to effect meaningful influence on decision making outcomes for the MTW extension. This requirement – of the residents' own time and resources – in order to engage with the EIA process reflects an element of participation within planning decision making that structures participation as a technology of government. This in turn has an impact on the ways in which residents of Bulga and the BMPA experience participation within the EIA process; an impact which has resulted in solastagia (a loss of sense of place) and a re-thinking of their experience of, and the scale of, citizenship. I explore these concepts in the next chapter of this thesis, Chapter Six.

5.4.1 Role of the Bulga Milbrodale Progress Association (BMPA)

The BMPA was formed in 1983 to promote the interests of Bulga and Milbrodale residents in the establishment of community amenities in the Milbrodale and Bulga area. The residents of Bulga and Milbrodale had seen that a nearby community, Broke, was organising events and receiving council funding and wanted to promote their communities in this manner. The BMPA has been responsible for raising funds and funding various activities in the area. Over the years, some of the projects have included the memorial gates, tennis courts, the annual Anzac service and more recently Bulga Beats. Bulga Beats is a concert and has been very successful and provides venues for local projects, arts and crafts and up and coming bands and celebrities (shown in Figure 5.3 below).



Figure 5.3 Bulga Beats Event¹⁹

With the unanimous decision to oppose the MTW expansion, the BMPA decided to form a sub-committee to address the community's concerns. Given the complex nature of the documents involved in the EIA process, a specialist sub-committee was established. This committee was comprised of Bulga residents who had the time and skills necessary to engage with the EIA process for the MTW expansion. These residents reported on a monthly or as needs basis to the general committee and provided recommendations. The sub-committee

¹⁹ <https://www.facebook.com/BulgaMilbrodaleProgressAssociation/?fref=ts>

was also involved in the fund-raising required in order to employ their own experts, take Rio Tinto to court and travel to attend various PAC hearings, as well as stage protests.

Additionally, their inability to sell-up and relocate as a result of the encroachment of the mine, along with the frustration for many at having specifically selected Bulga as an idyllic retirement location, only to have to suffer health and lifestyle impacts due to increased extraction rates, meant that these particular residents were determined not to experience any more detrimental impacts from the MTW mine. Their older age also influenced things, as the idea of being unable to sell and relocate, should they need to for health reasons, was something that concerned a number of BMPA members and not without cause. Glen described a woman in Bulga who was unable to sell her home to relocate with her very ill husband who required care and a living space that she was unable to provide. Glen found this a frightening prospect and one that could potentially impact on him.

I have to face it at our age that one day we will get sick. It happened to a lady called Mrs [Hearse], Liz Hearse, around near Judith Leslie's place further up the road. Her husband got motor neurone disease. ...Because of his condition, she wanted to get him closer to medical help, so she wanted to sell up and move...Could not get an offer on the house. ...So that's going to face up at some stage as well, so what do we do? I mean, if - let's say I get to a stage in a few years where I have to go for my licence test again and for some reason fail. We're stuck here. There's no public transport. Can't sell, can't drive, what do you do? *(Glen, personal interview October 2014)*

5.4.2 BMPA: Evolving Skills and Resources

As members of the BMPA, each of these residents brought to the group their own unique talents and expertise. The members had backgrounds in a number of different vocations, and on average were highly educated, and had the time available to engage with the EIA process.

One of the key actors, Al, was a retired quantity surveyor and building economist and this background provided him with a thorough understanding of the EIA process. His knowledge

was to help reframe the EIA process into one in which the Bulga community could more easily navigate successfully and even exploit at times.

Firstly I'm a quantity surveyor by profession... I'm a building economist but in the last 40 odd years I've been in project management, managing construction projects and development projects. So I've had a lot to do with the development industry and we can look at mining sort of as a development industry. They get their rules and they work into the rule system. *(AI, personal interview October 2014)*

This reframing of mining as a type of development industry meant that AI was able to engage with the EIA process for MTW mine using his own experience to fight the proposed extension.

But I'm very pleased I did because I've been able to use 40 odd years of experience in fighting council and working for developers, working against developers - not against, but working on the other side, client side and so it put me in good stead to actually lead the battle. *(AI, personal interview October 2014)*

The ability to understand the EIA process from the perspective of both the public and the developer was crucial because it meant that AI was able to think 'outside the box' and understood the many options that might be available to and exploitable by the BMPA. For instance, when the community had decided to fight the extension, they knew they would need funds. AI found out from someone outside of Bulga that Rio Tinto had provided funds to communities in Canada and used this to leverage money from Rio Tinto for Bulga.

So we met with the mines and - two of them, their liaison person and their person in charge of the project - and we said to them look we've heard that you blokes would actually fund our consultants to review your systems, review what you're saying. Don't know, that's ridiculous, no we'd never do that. Ah but we've heard - and it was actually from an American woman around the corner here who was a professor of whatever - and when she was involved up in North Canada on a diamond mine up there I said you actually funded that community to a certain - no, no.

I said well you think about it, it could be to your favour because our consultant might come back and say AI, community you've got no problems, nothing to worry about. Oh okay, so they went away. They came back within the week and said yes we will do it. *(AI, personal interview October 2014)*

The Environmental Impact Statement (EIS) document for the MTW mine extension was released for public review multiple times due to changes required by the PAC based on the

objections submitted by BMPA members and other concerned groups. Each time the EIS was released, BMPA members divided it up between them and spent hours combing through the sections; initially to understand what was in the original EIS and then with each new version, to ensure that all changes had been noted and addressed by them. The ability to review the EIS repeatedly and commit the amount of time required was, in many ways, the main strength of the BMPA sub-committee as a community organisation. Time was the key factor in an individual or groups ability to fully engage with the EIA process; without enough time to spend reviewing documents, hiring experts, presenting at PAC hearings, writing objections, and launching legal cases, meaningful engagement would have been impossible. This became the most important resource that the BMPA members would bring to the table; everything else grew out of this particular element.

He spent hours and hours reading and reading and picking out the biggest... *(Daisy, personal interview October 2014)*

While most of the BMPA members did contribute their time to the process of reviewing the EIS document, certain members were more actively involved than others, due to the nature of their expertise or familiarity with the local area and its history. Another of the key players in the BMPA was a local historian, Ross, whose family had been living in Bulga since its inception in 1820. Ross was significant not only because of the amount of time he was able and prepared to spend on engaging with the EIA process for the MTW mine extension. Likely due to his interest in Bulga's history, he had obtained and retained a copy of the 2003 EIS for MTW initial extension, which also included Rio Tinto's agreement to preserve certain Non-Development Areas (NDA) in perpetuity as well as reference to the Ministerial Deed of Agreement (MDA). This copy – the only one the BMPA or anyone else was able to get access to - proved to be the only proof of these agreements and the MDA.

Yeah, we've got to prove all the background information. Fortunately I'd kept all the EIS documentation from 2003, no one else had a copy of it. But, I got one. I was on the Community Consultative Committee so we got copies anyway. I had them here and we were able to pass them on to EDO to really look at what had been approved, particularly in regard to Saddle Ridge and Deed of Agreement and all that. *(Ross, personal interview October 2014)*

It was on the basis of this that the BMPA were able to prove the existence of the MDA and were then able to find out that Rio Tinto had not registered the MDA with Singleton Council. As mentioned earlier, because the MDA had not been registered with Singleton Council (indeed, they were not even aware of its existence until the BMPA brought it to light), Rio Tinto was able to say that the land in question had not been designated conservation land and, as such, they were within their rights to request an extension of MTW mine. Access to the actual MDA itself required significant time and effort as well.

Well we had to go freedom of information to get a copy of the ministerial Deed of Agreement [laughs]. *(Ross, personal interview October 2014)*

Further complementing the skills brought to the table by Al and Ross were the skills of Lori, who was acting as secretary of BMPA. Along with their time, Lori and her husband, Ben, brought another unique skill set; an understanding of mathematics and physics that allowed them to assess the auditory impacts of the MTW mine. The noise impacts were one of the most significant concerns for members of the BMPA and Bulga residents as a whole, so much so that nearly all BMPA members and several other residents had purchased and installed their own noise monitoring systems. Lori described how the noise from the mine was impacting her life and those of others in Bulga.

You know, you wouldn't have even known it was there when we bought the property but it was - then in 2010 the slag heaps actually went up above the intervening landscape and you really started to hear the trucks roaring up to dump on the top of the heaps and roaring down again. It just got to be unbearable and people were saying this is just terrible, it's just awful. *(Lori, personal interview October 2014)*

Despite complaints to the MTW mine about the noise levels, very little action was initially taken by Rio Tinto. Escalating numerous, repeated complaints to the level of the DoPE did eventually result in the DoPE requiring Rio Tinto to conduct a noise survey of a small number of properties in Bulga. While Lori was pleased that the survey was being done, she did point out the commissioning of the study for the DoPE by Rio Tinto was, in many ways, reflective of the BMPA's main complaint about the EIA process: that the DoPE and NSW government were on the side of the mining companies and not their own electorate.

They suggested that we had an independent noise study, which of course was independent to the extent that it was paid for by the mines, commissioned by the mines and even at the scoping meeting that we had down at the clubhouse - ... the guy who was going to be the principal conducting it was driven to the meeting by a mining person. So you know, absolutely in their pocket. *(Lori, personal interview October 2014)*

In an attempt to address what they thought was likely to be a biased outcome, the BMPA members purchased their own monitors, had them calibrated and tested to prove they were equivalent to the DoPE and MTW mine monitors and began gathering daily information on the noise levels. When the DoPE finally released the results of Rio Tinto's study, Lori noted that they had been right to do their own daily testing as Rio Tinto's results showed considerable discrepancy with their own.

But when the data was studied, they did in some ways make an error of judgment in that they actually published the 24-hour data for each and every property. We had the data for our property. We'd been keeping a noise log of every time we were disturbed by the mine because we had a handheld monitor, because most of the people who were really disturbed went out and bought these handheld monitors which are not brilliant but the SKM guy tested it against his equipment and it was very close. And the Department of Planning people said yes, they're not that bad.

..... many of us were using those to assess the noise. So we were keeping an independent noise log, an Excel spreadsheet. When they published the data for our property, it was quite interesting because my husband did a blind trial. He'd sort of looked through the graphsand where there was a big gap he'd note the time and then he'd go over to our log and see what we had. Surprise, surprise. And he'd do it the other way too. He'd say on this date we complained about noise at this time. Let's have a look at what was going on

there. Surprise, big gap [in Rio Tinto's records]. So yes, we were and are still significantly impacted by low frequency noise. *(Lori, personal interview October 2014)*

Contributing to the BMPA's overall knowledge of the landscape of Bulga and its surrounds was Glen, a long-time resident of Bulga. Glen ran a local business and volunteered for the local fire department. He had been living in his current home for over 20 years and brought this local knowledge to bear in his interactions with the EIA process. He was particularly vocal on the negative health impacts of the MTW mine and articulated his view that the EIA process contributes to the poor health of those engaging with the process.

The other thing that Sue said that men don't talk about, both she and I have been treated for depression and we're not the only people in the district, because we - it sounds silly, but you have this feeling of hopelessness, honestly. *(Glen, personal interview 2014)*

Glen's wife, Sue, reinforced this belief that the EIA process as it's being conducted in NSW impacts negatively on the health of those engaging with it.

I just felt he had other things to be getting on with and it was taking so much of his time. Not only that, but it was impacting his attitude. He was in a foul mood most of the time while he was reading it. So I wasn't happy that he had to spend all that time on it. *(Sue, personal interview October 2014)*

This viewpoint was also one shared by Jess, the wife of Al, who felt that the EIA process was one that was, when engaged with to the extent needed to potentially influence outcomes, deleterious to the mental and physical health of the participants.

That's been our huge problem because we came up here to build our house, the two of us, and retire. We should have finished the house four years ago. We haven't the time because Al has worked sometimes fulltime on the mine. I don't think anyone quite realises, it's huge, it's absolutely a huge amount of time he's spent in the office doing things and that takes a toll on relationships. Yes it's horrendous. We've, times when we've been away and we've had to come back or we can't go because there's something pending. It's a huge, for a few people like ourselves and a few other couples round here, it changes your life. It's extraordinarily stressful. We've got family as well who you're supposed to be interacting with, health issues and all sorts of things that come up. It's been hugely stressful. *(Jess, personal interview October 2014)*

Each of these individuals has and continues to play a significant role in the BMPPA in their fight against the MTW mine extension. The themes they raised about resource access issues, health impacts, and their perception of government corruption that infects the EIA process – each of these themes echoes throughout the story of the village of Bulga’s struggle to prevent the MTW mine extension. Whether through formal or informal means of engagement, these issues surface repeatedly and are linked to broader notions of citizenship, environmental justice and governance as well as technologies of government that are used to control and restrict participation in the EIA process.

These themes paint a compelling story about how power is being evidenced and exercised within the EIA process by the NSW Government, the DoPE and Rio Tinto. The NSW Government and the DoPE’s actions, along with the resource access issues inherent in the EIA process, are shown in this thesis to be key to the transformation of the community of Bulga’s reframing of citizenship as a means to resist the unwanted advancement of the MTW mine. Chapters Six, Seven and Eight will explore these themes further.

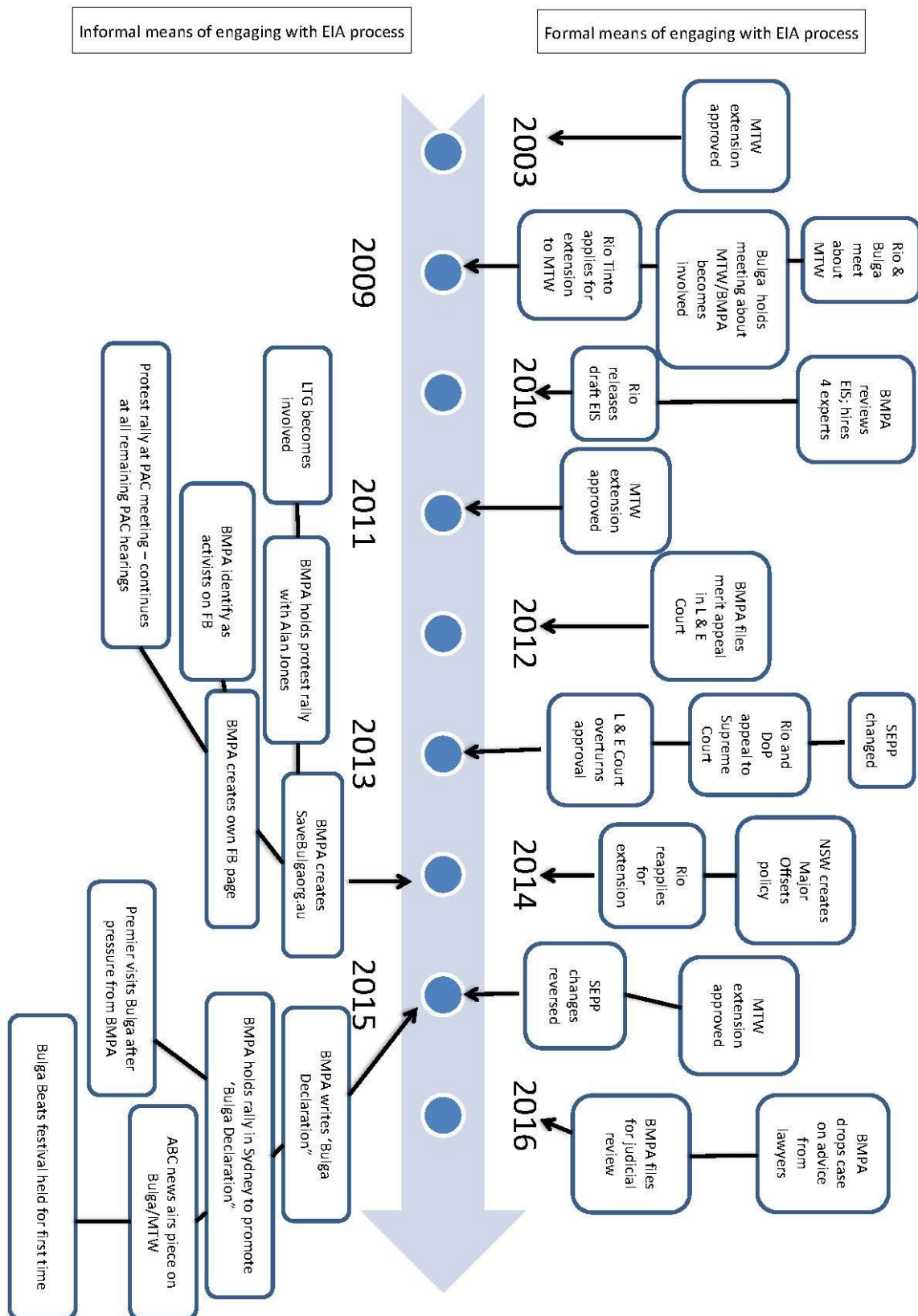


Figure 5.4 Timeline for MTW expansion EIA Process

Chapter Six:

Re-scaling citizenship and redefining place

6.1 Introduction

This chapter explores how the concept of citizenship was influenced by residents' understanding of place and belonging in Bulga, NSW. First, it reveals the evolution of citizenship as the community of Bulga journeyed through the EIA process, challenging the notion of citizenship as a national or state concern and re-inventing it as a local one. Here, I discuss how the NSW government's perceived betrayal of the Bulga community resulted in a new, localised construction of citizenship. This construction sees the Bulga community representatives, the BMPA, acting as protectors of the local values and beliefs to which they have assigned to their own understanding of the meaning of citizenship. Secondly, I explore how the identification of the community of Bulga as a space of dependence links in to the new notion of citizenship. Finally, I examine the idea that this changing understanding of citizenship was also influenced by the community of Bulga's experience of place and belonging. To explore this, I unpack the community of Bulga's notion of place and belonging and illuminate its significance as a driving factor in their fight to save their community and their own identity as residents of Bulga.

6.2 Subjectivities of citizenship

In Chapter Two, I described my two conceptual lenses, citizenship and governmentality. Here I show how linking these two concepts together provided a lens with which to illuminate and explore the ways in which the community of Bulga, and the BMPA in particular, transformed their notion of citizenship. The motivation for this transformation arose from actions taken by the NSW Government, and in particular the DoPE, to ensure the approval of the MTW mine expansion. This outcome resulted in feelings of government betrayal and loss of home and place within the community of Bulga.

The importance of place and government betrayal in the re-imagining of citizenship by the community is highly significant. The linking of citizenship to the local arose through a deep, meaningful attachment to the village of Bulga as a place of importance to the residents and their understanding of self. This occurred as a response to the NSW Government and the DoPE's bias toward Rio Tinto, which they viewed as a betrayal of themselves as citizens. In reframing their understanding of citizenship, the community of Bulga resisted the discourse of citizenship as deriving from the national and constructed their own counter discourse which placed them as community citizens. This altering of their citizen subjectivity proved an effective form of resistance, in that it worked to unite the community and consolidated their commitment to prevent the MTW mine expansion at all costs. Further, this reframing of citizenship at the local scale provided the means of grounding themselves in a space of dependence from which they could later launch their struggle into spaces of engagement to build wider networks of association with which to take on Rio Tinto, the NSW Government and the DoPE.

6.3 Understanding spaces of dependence and spaces of engagement

The idea of a space of dependence comes from Kevin Cox's (1998) work on local politics and the politics of scale. Cox described the space of dependence as "...those more or less localized social relations upon which we depend for the realization of essential interests and for which there are no substitutes elsewhere; they define place-specific conditions for our material well-being and our sense of significance"(Cox, 1998 p.2). The village of Bulga as a unique social and historical place of significance for its residents, a place that these residents feel strongly attached to for myriad reasons, acts for them as a space of dependence from which they can then engage with the wider world. According to Cox (1998), this point of engagement with the wider world can be seen as a space of engagement. Spaces of

engagement can be viewed as relationships or networks of association which allow for the securing of a space of dependence (Cox, 1998). Securing a local space of dependence may require engaging with a much wider sphere of influence than the local alone. To address this, Cox (1998) explored the idea that the *content* of a local politics of space might be different to the *form* of a politics of space. In other words, local government/community (form) doesn't necessarily engage only with local politics to effect change but may do so at a provincial, state or national level (content). In effect, the community of Bulga might be a local form, but their fight to stop the MTW mine expansion could transcend this and become part of much broader network of associations (content). Networks of association are also spatial scales and it is possible to create networks across, between and among different scales. This enables the creation of spaces of resistance that can be used to circumvent the formal boundaries defined by physical locations or circumscribed processes, such as the EIA process. Entering into these broader spaces of engagement are what enables the defining of, protection of and existence of the village of Bulga as a space of dependence.

6.4 Exploring Bulga as a space of dependence

The village of Bulga evolved as space of dependence for the BMPA over the course of the EIA process for the MTW mine expansion. Initially, the BMPA viewed Bulga as a space of dependence that embraced the local and required no engagement with wider scales. This reflected the fact that the EIA process as a space of engagement was structured by the NSW Government and the DoPE as a formal space designed to address developments that had state significance through a particular process. The BMPA was willing to engage within these parameters as they had expectations that their concerns would be acknowledged through the EIA process and adequately addressed. Thus, this was not at first an issue for the residents of Bulga or the BMPA. Indeed, the BMPA was particular about identifying as a

more conventional community group and did not, at this early point in time (2009 -2013), want to be mistaken for 'activists'. There were a variety of different reasons for this, among them the feeling that identifying as such would alienate those residents who were involved with the MTW mine in some capacity. Therefore, the BMPA chose to engage with the EIA process as responsibilized citizens (i.e. national citizen subjects), anticipating the denial of the MTW expansion based on their expectation of government protection for their community, in response to their engaging through accepted channels.

You're just running an ideological campaign against mining. We said no, no, no we're not, we're just simply a village of 400 people that will be consumed by this mine if it expands. We're fighting to save our village. No, no, no.... but don't forget we're just a simple progress association. Our role here is for the betterment of the village of Bulga and Milbrodale. *(AI, personal interview October 2014)*

The BMPA and other local residents of Bulga submitted their objections to the MTW mine via the afforded avenues for engagement in the EIA process: comments on the draft EIS and at the Planning and Assessment Committee (PAC) meeting. The NSW Government and the DoPE's response to these objections was to approve the MTW expansion regardless of community concerns. The approval stunned the community of Bulga.

Now that was a big disappointment to us because everything we had seen said the mining company and the government whatever they're trying to do is wrong, they can't do this. So we felt we were absolutely right.

So it came as a bit of a shock to us to find that the department had come out and said we're going to recommend it, even the health department, the local health department here said no it should not expand. *(AI, personal interview October 2014)*

A series of word clouds representing the top 25 most commonly used words drawn from the BMPA interviews and social media posts occurring after the first PAC meeting and subsequent appeal at the Land and Environment Court, reflected this frustration. It is interesting to note that, prior to their win at the L&EC, the BMPA had no social media engagement. Following on from the win and the resulting actions of the NSW Government

meetings with both Rio Tinto and the DoPE to discuss the noise issues repeatedly raised as a significant impact by the Bulga community.

One of the things that infuriated me about the first PAC ... the PAC which we lost - ... is that Al gave some submission where he was talking about the inadequacy of the computer modelling and the way the computer modelling had been done and the way it didn't match up to reality.

We found out afterwards in the documents that were available after they'd made their decision, that they'd based their decision on dismissing what Al had said ... having meetings with the mine and the Department of Planning and acoustic experts who said no, that's rubbish. How corrupt is that? They didn't call Al in and say can you come to this meeting and defend your position, they didn't - we didn't - I mean, Al and the community didn't even know they'd had this meeting until it was all over. (*Lori, personal interview October 2014*)

It was at this point that the stance of the community of Bulga and the BMPA began to shift away from the idea that the NSW Government and the DoPE would put the community's best interests first and foremost. In response, the BMPA decided to appeal the approval decision to the L&EC on the basis of merits review (See Figure 5.3 in Chapter 5). This move meant that the community of Bulga's space of dependence had just connected with a broader space of engagement. While this space of engagement was still within the formal parameters of the EIA process, it was spatially outside of the local scale. The BMPA took this step - despite the associated difficulties with resource access, especially acquiring funding - in order to preserve the space of dependence within which they framed Bulga. Cox's (1998) description of the space of dependence as a unique, place-specific location from which security and well-being was derived encompasses the Bulga community's feelings towards their village and drove them forward in its defence.

One of the things that I often think - I just walk out the back there and I hear the bellbirds, the whipbirds, the calm, the quiet and I think this is what we're fighting for. It's not an unreasonable thing to want. (*Lori, personal interview October 2014*)

The strong sense of connection and attachment to the village and surrounding environment only served to enhance the residents' feelings of abandonment and betrayal when the DoPE united with Rio Tinto to appeal the BMPA's L&EC win.

Well, how can you not feel that the Government was - the bottom line is the Government wants the royalties that they get from these sorts of things. So they'll go to any lengths to maintain it, even though they may say they have an environmental philosophy, it doesn't go as far as protecting what's in the way of a mine. *(Rose, personal interview October 2014)*

I think you would find within this community a general disrespect for the whole government process. I think the personalities involved, their way of doing things and the fact that citizens have been shown to have no voice, yeah, it's blatantly wrong. *(Lori, personal interview October 2014)*

The joint appeal by Rio Tinto and the DoPE against the community of Bulga's win overturning the initial approval decision re-enforced the community's sense of unity in the face of a coalition of government and a multi-national corporation. This led the Bulga community to question the NSW Government and the DoPE's commitment to its citizens.

Our question was now, our question is now so who's driving all this? Who's driving this massive push against communities? Department of Planning has espoused absolute independence. Well that hasn't proven to be the case. So who's pushing this? *(Al, personal interview October 2014)*

Feeling that the community of Bulga had been forsaken by the very governmental bodies that were to protect it, the BMPA and community chose to re-define their space of dependence and the discourse of citizenship and having done so, enter into spaces of engagement with those new understandings.

The sense of unity felt by the community was therefore underpinned by the notion that their government had not acted in support of its citizens and that the Bulga community was now responsible for protecting not only the village but the residents themselves.

“It seems clear that the New South Wales government thinks that one foreign Rio Tinto bird in the hand is worth more than 380 Bulga Aussie birds in the hole,” resident of 18 years Anne-Marie McLaughlin said.²¹

Yesterday a group of around 100 protestors sheltered, bedraggled in torrential rain, outside the Martin Place office of New South Wales Premier Mike Baird, preparing to deliver the ‘Bulga Declaration’. They want “a return to justice, for a start; fairness and honour”. Things that have been snatched from them by the government of New South Wales. Over 2,500 people have signed the declaration, pledging to “use all peaceful means” to protect the residents of Bulga and the Wonnarua custodians from Rio Tinto’s Mount Thorley Warkworth Mine expansion.²²

The Bulga Declaration was a document created by the BMPA and signed by residents of Bulga, Wonnarua traditional custodians, the Broke Fordwich Tourism Association and the Hunter Valley Wine Tourism Association. It reflected the community of Bulga’s intent to protect and preserve their community and further illustrated the shift of citizenship as understood by the residents towards a local, community level. Thus, the community of Bulga had begun the process of altering their citizenship discourse from that of a national one toward a subjectivity that embraced the idea of the community citizen. As they worked to resist the NSW Government and the DoPE through this reframing, they transformed the technologies of government inherent in the EIA process into spaces of resistance. Chapter Eight provides a full discussion of the EIA process as a technology of government.

²¹ <http://www.yourdemocracy.net.au/drupal/node/30138>

²² <http://www.yourdemocracy.net.au/drupal/node/30138>



Figure 6.3 Photo of Bulga community members protesting Mount Thorley-Warkworth mine expansion²³

6.5 Citizenship: a local identity

As the ability to achieve local interests was dependent on the ways in which the BMPA and community were able to exert control over the physical space that was Bulga (Cox, 1998), it made sense for the residents to re-identify themselves as citizens of that particular landscape and the political unit it comprised (Dauvergne, 2005). The NSW government's amendment to the mining State Environmental Planning Policy 2007 (SEPP 2007), revoking of merit review, amendment of the biodiversity offset laws, along with its refusal to accept two court rulings denying the extension, forced the community of Bulga to re-examine their own ideas of democracy and the role of government in the representation and defence of citizen well-being. In effect, the community felt that the NSW government was aligning itself with Rio Tinto at every turn and taking whatever methods were necessary to ensure that the MTW mine extension was approved. This behaviour was not in line with the locals'

²³ <https://www.facebook.com/Lock.The.Gate.Alliance/>

understanding of how democracy was evidenced in a country like Australia, causing further distress for the local community.

But we said well hang on where is the government in this? Where are the people protecting us? Where is the government department who's supposed to be protecting us, Department of Planning, who plan for proper and orderly management and development of land and resources? (AI, *personal interview October 2014*)

Having decided that the NSW Government was not backing them, nor had there been any intervention on their behalf by the Australian Government, the community of Bulga had begun to view themselves as responsible for upholding justice for citizens. Thus, the focus on Bulga as a special space of dependence from which residents derived a feeling of place and belonging evolved over the course of the fight against the MTW expansion toward the notion of Bulga as a place of civic identity. In the same way an individual would identify as Australian, the creation of Bulga as a space of dependence provided a distinct parameter within which the residents could reframe their understanding of citizenship.

Meanwhile, back at home, a group of hardy “Bulgarians” maintains a daily protest vigil to stop Rio Tinto destroying the historical Wallaby Scrub Road.²⁴

This reframing was done to address the ways in which the residents felt that the NSW and Australian Governments were derelict in their responsibility to their own citizens in favour of Rio Tinto. The identification as citizens of Australia became problematic for the residents of Bulga because of this perceived dereliction of duty by the Australian and NSW Governments.

This was just the first of a series of moves by The Government ('of the people for the people?') to bulldoze through the interests of citizens in order to favour the interests of a Multinational Company. Fundamentally we see the people's representatives prostituting Australia's land and assets to a Multinational Company. (Lori, *PAC submission December 2014*)

²⁴ <http://www.savebulga.org.au/reminder-new-bulga-sydney-weekend/>

Feeling abandoned by the government they felt should have been protecting them and their village, as well as upholding the legal rulings in their favour, the BMPA used their website, www.savebulga.org.au, to promote the Bulga Declaration which reflected their new identity as community citizen subjects. The Bulga Declaration was, in effect, a means of establishing a new 'constitution' that addressed the specific concerns of the community and promoted a united sense of purpose and identity in the fight against both Rio Tinto and the NSW government. The Bulga Declaration reads as follows.

The Bulga Declaration

We, the undersigned, make this promise: we will not allow the Warkworth mine to destroy Saddle Ridge. Saddle Ridge harbours woodlands and wildlife that are vanishing from the Hunter Valley due to open cut coal mining. It is an ancient pathway and place of harmony, protection, and direction for Wonnarua people. It shields the village of Bulga from noise and dust rising from the super pits of Rio Tinto's Mount Thorley-Warkworth mine. For the Wonnarua, the people of Bulga, and the wildlife, Saddle Ridge is home. It protects and guides them. Such things cannot be compensated for. They cannot be sold, or replaced.

The NSW government may have signed the death warrant for Saddle Ridge and the village of Bulga, but the people have not. The government and Rio Tinto are colluding against us, but we are united and we will not be subdued.

The highest courts in New South Wales have rejected the Warkworth mine expansion for the same reasons we reject it. By siding with Rio Tinto to subvert the people's victory in court, the government has crossed a line. Now we are the ones that will uphold fairness, protect the ridge and restore faith in organised community.

We stand with the village of Bulga and the Wonnarua Traditional Custodians. We pledge to them that we will use all peaceful means to help them protect community and culture from the Warkworth coal mine.²⁵

To effect this shift in understanding of place to a civic identity, the BMPA and the community of Bulga had to reframe the idea of citizenship so that it was created by ties to the local scale instead of the national. By re-identifying themselves as citizens of Bulga, as opposed to

²⁵ <http://www.savebulga.org.au/bulga-declaration/>

citizens of Australia, the Bulga community was able to forge a civic identity based on ties to Bulga as a place of significance and identity.

Meanwhile a group of hardy Bulgarians freeze in icy wind keeping alive a protest vigil at the corner of the Wallaby Scrub and Putty Roads. They are collecting signatures for a Petition to protect the Wallaby Scrub, the Saddle Ridge and the Warkworth Sand Woodlands from the destruction by the rapacious Rio Tinto Warkworth Mine.²⁶

In seeing Bulga as a space of dependence, the community had reformed the local into a political unit from which they could enter into spaces of engagement to prevent the MTW mine expansion. The idea of the local as a political unit allows for citizenship to be constituted within this boundary (Dauvergne, 2005), which is precisely what the community of Bulga chose to do in response to the outcomes of the formal EIA process. To reinforce the idea of Bulga as a place from which community could derive citizenship, the BMPA started a social media campaign promoting Bulga as a unique location, politically motivated to fight the NSW government, the DoPE and Rio Tinto, and able to do so within particular spaces of engagement based on their independence as a political unit. This discourse was encapsulated in the Bulga Declaration and promoted across social media, via the BMPA's own website and Facebook page, and those of the environmental and community groups that had allied themselves with Bulga.

The NSW government may have signed the death warrant for Saddle Ridge and the village of Bulga, but the people have not. The government and Rio Tinto are colluding against us, but we are united and we will not be subdued.

The highest courts in New South Wales have rejected the Warkworth mine expansion for the same reasons we reject it. By siding with Rio Tinto to subvert the people's victory in court, the government has crossed a line. Now we are the ones that will uphold fairness, protect the ridge and restore faith in organised community.²⁷

²⁶ <http://www.savebulga.org.au/relocating-bulga-discussion-continues/>

²⁷ <http://www.savebulga.org.au/bulga-declaration/>

The BMPA organized a local event – Bulga Beats – to promote the village and other local industries, like wineries and agriculture, as a means to identify Bulga with a strong economy that provided employment and growth. Casting themselves in the role of government, the BMPA pushed to promote Bulga as a place of economic and social growth, promoting the local as a viable alternative to the MTW mine in terms of employment and community. The BMPA chose this avenue in order to promote a discourse that could challenge the discourse put forward by the NSW government which forced the focus onto local employment (i.e. MTW extension would provide 1300 jobs), and used this as a rallying cry to support approval for the mine. The re-scaling of citizenship to the local level by the community of Bulga is supported by the promotion of the village as a place that offered an economically and socially viable option for employment and residence.

Bulga Beats Festival

After a very successful inaugural event in June 2015, Bulga Beats Festival 2016 is looking to be bigger and better than ever. This music, market and arts festival focuses on community building, attracting people to the Hunter Valley and our district, supporting / promoting sustainable industries, local businesses and wine & tourism in our area. Our little town's big festival attracted people not only from the Hunter Valley but also from Sydney, the Central, Mid and North Coast. We even had some festival goers from Brisbane, from Victoria and even Tasmania.²⁸



²⁸ <https://www.facebook.com/BulgaMilbrodaleProgressAssociation/>

Figure 6.4 FaceBook page promotion of Bulga Beats Festival

To further promote the idea of them as community citizen subjects, the BMPA worked within their space to dependence to reinforce the notion of the NSW Government's lack of natural justice to its citizens and the ways in which the BMPA and the community of Bulga had taken on this responsibility. Using social media, in particular their Facebook page, Bulga Milbrodale Progress Association²⁹, the BMPA promoted their struggle to stop the MTW mine expansion through protests, rallies, local media productions consisting of interviews with residents describing the effects of the MTW mine on their lives, and links to newspaper, television and social media articles discussing the conflict. Throughout these, the BMPA kept a constant theme to the fore; that of the BMPA as defenders of democracy and the rights of citizens against a corrupt government and planning department.

Well they're (PAC) employed by the government. They depend upon the government for their next commission and they're actually employed by the Department of Planning, the very enemy that we seek to unseat.... So the government then sets up the rules to make sure it gets approved because their whole - I was saying about the government sets the rules; the government does the assessment; and the government does the approval; and the government is the beneficiary of all this because it gets royalties. *(AI, personal interview October 2014)*

Painting the NSW Government and the DoPE as corrupt allowed the BMPA to more easily co-opt the right to bestow citizenship, claiming their space of dependence as a non-corrupt political unit present in local space versus the corrupt space the EIA process currently existed in, supported by corrupt government bodies colluding with proponents. This re-envisioning of the EIA process as corrupt re-enforced the community citizen subjectivity by promoting resistance to the EIA process outcomes, effectively turning a technology of government into a space of resistance and power for the community of Bulga.

²⁹ <https://www.facebook.com/BulgaMilbrodaleProgressAssociation/>

The devolution of citizenship down to the local level arose not only from the actions of the NSW Government eliciting a strong sense of betrayal from the Bulga community. Strongly linked into this was the community's sense of Bulga as a place of deep significance and one from which they also derived a feeling of belonging and identity.

6.6 Place and Belonging

Although the impacts of a global economy's drive for coal were the trigger for the community of Bulga's reflections and re-framings about their community, the meanings and framings given to place and belonging were derived from residents own local experiences. Residents of Bulga are comprised of descendants of the original Aboriginal tribe – the Wonnarua - from whom the land was initially stolen, locals of European descent from the first colonial settlers and more recent individuals arriving within the last 20 years or so, among others. While my focus is on the more recent arrivals to Bulga and the first colonial settlers' descendants, Wonnarua people did participate in the EIA process³⁰ and did offer a public acknowledgement of their deep attachment to their ancestral lands.

The area proposed to be cleared for the latest open-cut coal expansion will impact 110 registered Wonnarua cultural sites.

"Bulga to me, and the land all around, is very important," traditional custodian Kevin Taggart told demonstrators. "So for our people, our rights, our pathways, all of our meanings, they just go and chew our meanings to pieces and destroy everything," he said. "I've been reared up there and hunted on there, fished around that area, and at the present time, for the last 10 years, the fish have depleted, and now the fish are gone.

"Isn't that telling us something is wrong? It's got to be telling us something is wrong."³¹

Indeed, the sense of connection with the landscape and feelings of belonging were so intense for the Wonnarua, that those speaking on behalf of their tribe at the September

³⁰ Documents submitted by the Wonnarua tribe to the PAC were not available publically.

³¹ <http://www.yourdemocracy.net.au/drupal/node/30138>

2015 PAC hearing were overwhelmed. One man spoke struggling to hold back tears; one woman actually collapsed and had to be helped back to her seat, so overcome was she with emotion.³² This deep emotional connection with the land reflects the millennial long unity with the land experienced by the Aboriginal culture in Australia. While such an intensity of emotional and cultural connection was not the experience of the non-indigenous residents of Bulga, strong ties to place were also evident.

Even for the non-indigenous residents, Bulga had become more than just a village. It had become a place of personal significance based on family history, landscape ties and the strong social fabric of the community. The concept of 'belonging' is understood in the literature to broadly encapsulate the notion of attachment to place (place-belonging), with the idea being that attachment to place is a self-created narrative with which people come to understand themselves as 'belonging' (Benson and Jackson, 2013). Antonsich (2010 p.4) refers to 'belonging is a personal, intimate feeling of being 'at home' in a place'. It is linked to feelings for a particular place that might derive from emotions experienced there or from strongly felt feelings for a place that come from family ties, feelings of relatedness or other links, even if the place isn't physically experienced by an individual. The residents of Bulga forged strong ties to the landscape and the community. They identified as 'Bulgarians' and had a deep appreciation for their village. Local resident, Lori, described her feelings for Bulga as a place of deep significance to her and the broader community.

It's heartbreaking. It's not just frustrating, it is heartbreaking. Because this community, it is unique. Even if you look at Broke (nearby village), Broke is far more Pitt Street farmers and far more people who are less involved and passionate about the place. Here it just is - it's an old community. I'm not one of the old families but there are old families here that

³²³² Participant observation at September 2015 PAC hearing.

date from the time this area was settled, a lot of them. I think you've no doubt seen the Bulga book. That just shows it. (*Lori, personal interview October 2014*)

Another long term resident of Bulga, Ross, spoke of his deep attachment to the village based on his family's significant colonial history there and his appreciation of Bulga as a vibrant, growing place.

But, we had another particular interest in saving Bulga because my great-great-great grandfather was the first settler in 1825 and the family has been here ever since. So I felt really obliged from a personal viewpoint to try and save the village because it's a growing village. Whilst they say it's like a lot of small rural villages, it's just dying, well it was never dying, it's been growing over the years. If you look that way it's a nice place to live, you've got the mountain and the national parks. (*Ross, personal interview October 2014*)

The impact of the MTW mine expansion on the community of Bulga was addressed by the BMPA in their submission to the second PAC hearing. It spoke to the profound feeling of attachment the residents of Bulga feel for their village and the enormous impact approving such an extension would have on Bulga and the community.

People form strong bonds with their Community, and they suffer grief when those bonds are broken by the activities of mining companies; people having to move away, facilities being downgraded, and whole Communities destroyed, such as has happened with Ravensworth, Warkworth and Camberwell. The psychological cost of losing control over your immediate environment has never been taken into account and has caused people to become mentally and physically ill. These two factors add up to a great deal of harm and suffering which has never been calculated, evaluated or compensated by mining companies or the government, and it is time it was taken into account. (*BMPA submission to PAC December 2014*)

These feelings of attachment to Bulga as a space of dependence of great personal, social and cultural significance influenced the ways in which the BMPA and other Bulga residents chose to engage with the EIA process outside of the formal avenues. They chose to protest by holding rallies, including one that show-cased a 'New Bulga' representing all they held dear about their community, and asked for public support at these events by sending out bulk emails and advertising on their own FaceBook page as well as Lock the Gate's.



Figure 6.5 BMPA protesting with Lock the Gate³³

The deep attachment to place was expressed through these protests and in news articles.

“Bulga is such an important community the residents have strong attachments to it and each other, it is vibrant and cohesive just look at our beautiful hall so why should a government allow a place like this to be destroyed when other options are available.”³⁴

³³ <https://www.facebook.com/Lock.The.Gate.Alliance/>

³⁴ <http://www.singletonargus.com.au/story/2187019/bulga-paradise-lost/>

The residents of Bulga had such a deep personal attachment to their village that they have kept fighting to defeat the MTW mine expansion for nearly seven years and have vowed to continue to do so indefinitely.

Bulga residents have vowed to use all peaceful means to prevent Rio Tinto's Mount Thorley-Warkworth extension from going ahead. "With every other avenue to protect our homes and peaceful valley from this massive open-cut coal mine exhausted, we are left with no choice but to draw a line in the sand," Bulga resident Stewart Mitchell said.³⁵

The experience of attachment to Bulga was raised by the residents as part of their defence in the L&EC, using the concept of 'solastalgia' to further describe their own experience of what was happening to their village.

6.7 Solastalgia and place

Solastalgia is a concept developed by Glen Albrecht (2007) - who spoke on behalf of the BMPA in their merits appeal case at the Land and Environmental Court, NSW - that describes the emotional devastation and distress caused by the inability to derive solace from an individual's home environment. It is a homesickness that can be experienced while still at home due to the inability to control the negative impacts occurring within a treasured environment, resulting in the undermining of a community's sense of place and safety (Albrecht et al., 2007). The impacts of solastalgia can be profound and range from a feeling of desolation through to severe depression and even suicide (Albrecht et al., 2007). The residents of Bulga clearly identified as experiencing solastalgia and it factored into their conceptualisation of Bulga as a space of dependence from which they derived strong identity and meaning. At a PAC meeting, one of the presenters from the BMPA described the effect the potential mine expansion was having on the community.

Why am I here? This should not be!! I am here to try and save our Village of Bulga from a foreign-owned mining company. The stress this has caused my family along with all of the

³⁵ <http://www.theherald.com.au/story/2926409/bulga-to-continue-fight-against-mine/>

other members of our Community is unthinkable and inhumane. Thank goodness for Professor Albrecht who understands solastalgia – he is so right!!! (*Lily, submission to PAC hearing December 2014*)

Chief Justice Brian Preston of the Land and Environment Court, NSW noted in his judgement the negative effects of solastalgia on the lived experience of place, and described the extent of the impact on the residents of Bulga.

Paragraph 421. Professor Albrecht's evidence was that solastalgia is an apt descriptive term for the combined environmentally induced desolation and powerlessness the impacts on people in the zone of affectation of coal mines and power stations.

Paragraph 425. What those testimonies revealed was "deep solastalgic distress about the damage that has already been done to their loved landscape and the bank is the deep anxiety that this level of distress could get even worse as the mine expands towards the edge of the town."³⁶

Solastalgia accurately described the impacts of the MTW mine on the community of Bulga and further reflected the ways in which their inability to effectively influence decision making outcomes within the EIA process caused frustration and anger. The NSW government and the DoPE engaged with the EIA process in ways that suggested considerable bias in favour of Rio Tinto. The proposed extension of MTW would see the mine not only moving to within 2600m of Bulga, but also remove or negatively impact local landmarks that were part of the place identity of the community. The loss of Saddle Ridge, a significant landmark that provided visual and acoustic protection from the MTW mine, was of particular concern. The fact that it had been protected by a Ministerial Deed of Agreement (Deed) guaranteeing its preservation in perpetuity, a Deed that was later amended to allow for Saddle Ridge to be mined, infuriated the community. Bulga residents identified the village with Saddle Ridge; it was considered an identifying feature of Bulga's landscape, as much so as the local pub or village church. Place-belonging ties significant features of the landscape

³⁶ Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited

with emotions derived from the way in which an individual experiences those locations or landscape features (Antonsich, 2010, Trigger and Mulcock, 2005). Saddle Ridge was a landscape feature that the community of Bulga identified with as a boundary marker of the place that was Bulga. It also provided a visual screen of the MTW mine and offered some acoustic protection for the village. The loss of Saddle Ridge and revoking of the Deed that had protected it contributed to a reduction in the lived experience of place as well as trust in the NSW government.

People living in Bulga were entitled to believe that their personal interests as well as ecological interests were well-served. And; they were entitled to rely on that document to protect them and their families for the future. Indeed many new homes and home improvements proceeded comfortable in knowledge of that protection! (Lori, submission to PAC hearing December 2014)

6.8 Conclusion

The residents of Bulga's experience of their village as a space of dependence reflected their love of their land and lifestyles, their history and the cultural significance of Bulga. They drew on these attachments to create a space of dependence from which they could work to defend and protect their village from the MTW mine expansion. In doing so, and influenced by their experiences with the NSW Government, the DoPE and Rio Tinto in the broader space of engagement, they sought to reflect the significance of their village through a the creation of a new citizen subjectivity that saw citizenship as arising from the community level. By bringing citizenship down to the local level of their village and identifying as 'Bulgarians', they constructed a discourse that worked to foster a moral imperative upon which they could fight against the MTW mine expansion. Through their re-framing of citizenship, they were able to situate 'Bulgarians' as the un-corrupted, ethical protectors of their village as stated in their 'Bulga Declaration'. In the struggle against Rio Tinto, the NSW

Government and the DoPE, this re-framing of Bulga as a citizenship bestowing space of dependence based on deep emotional attachments to place provided the basis to keep on fighting.



Figure 6.6 Comic from the Newcastle Herald³⁷

³⁷ <http://www.theherald.com.au/story/2093489/peter-lewis-cartoon-gallery/#slide=120>

Chapter Seven:

Re-scaling the narrative to 'jump scale': resistance in action

7.1 Introduction

This chapter explores how the residents of Bulga and their community group, the BMPA, fought the MTW mine expansion. Initially, by, exploiting the legal means available to them through the EIA process, and later by aligning themselves with Lock the Gate, co-opting ideas of citizenship and activism and engaging with various forms of media. This chapter will discuss the legal avenues taken by the BMPA as their first means of resisting the MTW mine expansion. Then, having failed to prevent the NSW Government and the DoPE from approving the MTW mine extension, despite two court wins, it describes how the BMPA then moved on to other forms of resistance.

Grounded in Bulga as their space of dependence, the BMPA and community of Bulga chose to enter into spaces of engagement across multiple scales, moving from local to state, national and international levels of engagement to promote their community and cause as they resisted the expansion of the MTW mine. Their means of doing so was through an exploitation of the media available to them. In order to enhance their ability to connect with the media, the BMPA looked to align themselves with environmental and community groups with media access, as well as making themselves available to the media that came calling following their L&EC win. The BMPA's use of the media as a means of promoting their fight against the MTW mine expansion is explored in order to illuminate the way in which they chose to re-scale their resistance and the narratives they used to do so. In particular, I examine the ways in which the BMPA and the community of Bulga chose to engage with Lock the Gate, an Australian-wide grass-roots conservation group³⁸, in order to achieve a wider media profile which they used as a form of resistance. This chapter concludes with an

³⁸ http://www.lockthegate.org.au/about_us

exploration of how the BMPA moved to claim the labels of 'activist' and 'citizen' and re-frame them as their own as a means of resistance, derived from a discourse that painted the Bulga community as the moral and ethical superiors to the NSW Government, the DoPE and Rio Tinto.

7.2 Legal resistance

In 2013, the EIA process in NSW allowed community groups or other interested parties to appeal an approval decision made by the DoPE. This was accomplished through a merits appeal at the L&EC. Frustrated by what they felt was the DoPE's lack of consideration of their concerns, the BMPA chose to challenge the approval for the MTW mine through a merits review at the L&EC. Merits review provided them with the opportunity to have all the relevant facts in the case reviewed by an independent judge. This was especially important to the community of Bulga as the PAC members who had recommended the MTW mine's approval were employed by the DoPE and as such the community residents felt the PAC's claims of independence were suspect. In what was to be called a landmark ruling, Chief Justice Brian Preston found in favour of the BMPA and found that the environmental and social impacts of the MTW mine expansion would be too great to grant Rio Tinto approval.

I have determined that Warkworth's project application for the Project should be refused, having regard to the significant, adverse, biological diversity, noise and dust, and social impacts of the Project.³⁹

Legal avenues for appeal are considered an importance facet of justice and afford communities like Bulga the opportunity to resist developments that would be harmful and

³⁹ **Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited [2013] NSWLEC 48 p.10**

keep governments and planning bodies accountable. The CEO of the EDONSW spoke to this point during my interview with her.

And one of the things that is really, really important and we try our hardest to remind the policy makers and the law makers that you know, this is a very important submission that was made and that was two years ago where the independent commission against corruption made its submission to the planning reforms in New South Wales and it said, actually merit appeal rights should actually be expanded in New South Wales because it's said they act as an anti-corruptions safeguard and I think that ultimately, if you know that your final decision is entirely reviewable by an expert tribunal ...*(CEO, EDONSW personal interview May 2015)*

The ruling in favour of the BMPA caused an enormous stir in the mining industry, such that the Chief Executive for Energy of Rio Tinto, Harry Kenyon-Slaney, flew in from London, UK immediately upon being told the outcome. Kenyon-Slaney then met with the Premier of NSW, Barry O'Farrell to discuss options for reviving the planning application. Evidence of this collusion between the NSW Government and Rio Tinto is explored in Chapter Eight of this thesis. The result of this meeting and follow-up correspondence between the NSW Government and Rio Tinto was an amendment to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (SEPP) which instructed the decision makers for major developments to place an emphasis on the economic value of the development over any environmental or social impacts. This was accompanied by an insistence on the PAC holding a public hearing instead of a meeting which removed the possibility of merits review for a community. Concurrent with these actions, the DoPE joined with Rio Tinto in appealing the L&EC ruling to the Supreme Court, NSW on the basis of errors in law.

The result of all these actions was that Rio Tinto was able to re-apply for approval for the MTW mine expansion and was quickly granted approval to commence with a small section

of the proposed expansion. Unsurprisingly, the BMPA and the community of Bulga were unhappy with these actions and the subsequent approval of the MTW mine. Having already won one court case (and subsequently winning the appeal at the Supreme Court), they had exhausted the legal avenues available to them and despite their wins had not achieved their goal of stopping the MTW mine expansion. It was at this point the BMPA decided to try a different means of resisting the planning approval outcome. This decision was motivated by the continued desire to protect the village of Bulga. With no formal avenues of engagement left to them in the EIA process, the BMPA and residents of Bulga felt that their only option for changing the approval decision for the MTW mine was to keep their fight as public as possible, something they felt they could best accomplish with media exposure. From this point forward, they worked to expand their space of engagement and connect with any media possible as well as the wider environmental and conservation community, in particular the community-based group, Lock the Gate.

7.3 Everyone wants to talk to us: re-scaling resistance through media

Their success in the L&EC had garnered the BMPA a great deal of media attention.

The day we won in the land and environment court. That then became a big news item. So I think it went from there, it went from a local or, a just maybe a state to, much bigger because...got headlines here basically, you know David beat Goliath and we beat not only Rio but also the state government and I think that's what caught people's attention...because we can actually set out to make this a big deal, we thought this was just electrified, have a go at this....suddenly we realized that this was a big deal...particularly when they challenged us in the supreme court. That people started to say, whoa this is a big test. Then the National Paper started to look at it, probably not so much National Papers but the International Media started to look at it. And I think the green movement and also took it up as well as seeing this massive fight and we were successful therefore, hey let's look at this, see how they did it or what they did and so it just went from there. It just, just went crazy. *(AI, personal interview September 2015)*

Prior to the L&EC win, the BMPA had had little contact with the media, local or otherwise.

While their use of merits appeal had raised some interest in the local press, the BMPA had

not been contacted by other media outlets. Following the L&EC win, with the phenomenal increase in media attention they had received, the BMPA decided to actively engage with the press in whatever manner possible.

You need contacts absolutely right. So, yeah, we had a game plan with a strategy which was to involve the media, we saw that as important. *(Al, personal interview September 2015)*

The BMPA's goal to exploit the press led to them using the media coverage to leverage the ability to re-articulate their claims against the MTW mine expansion across multiple scales. This included aligning themselves with individuals who could facilitate their interactions with the media. Thus, the BMPA successfully brought local, state, national and international interest to their struggle and this enhanced their ability to legitimise and garner support for their opposition to the MTW mine expansion. This ability to operate simultaneously at multiple scales has been shown in the literature to be influential in successful community actions against multi-national companies and governments. For example, Haarstad and Floysand (2007) describe something similar in their case study analysis of the conflict over a mining project in Tambogrande, Peru. They show how the local community was able to leverage power for their oppositional narrative across national and international scales using their connections to non-governmental organisations (NGO) operating in Peru to promote support.

The BMPA did not focus solely on connecting with NGOs or other similar groups (although they did, particularly with Lock the Gate), but also strove to push for direct connections with media that they felt would be beneficial to their cause. This approach – engaging media across multiple scales – was a particular strategy that sought to see the community of Bulga's struggle become well-known enough that they gained power with which to re-

engage the NSW Government after all formal avenues were closed. While striving to enter spaces of engagement with the media at a state level, and possibly national, the BMPA had not sought to do so at an international scale but found that happening anyway.

International media, no we never set out to do anything but that seemed to arrive in our doorstep. (Al, *personal interview September 2015*)

We had Japanese media here last week. He stayed over and they go back and say, you know, to the Japanese people, "The coal that we're buying off Australia is causing X amount of problems" and all that sort of thing. We don't ask them, they just come. (Jess, *personal interview September 2015*)

Al was on Russian TV, they ring up when the PAC said Bulga should be relocated⁴⁰ because the Russian's thought that was amazing. What in Australia? They're going to relocate because of a mine. Wow, we got to get on to this one. So they rang and he was on TV...but we don't ask for it, it's just...(Jess, *personal interview September 2015*)

At a local/state level, the BMPA worked to connect with individuals who could facilitate the group's access to a variety of media outlets. For instance, connections with individuals in the broader Upper Hunter Valley and Sydney areas led to the BMPA's discourse of NSW Government corruption being discussed on a national radio show hosted by Alan Jones, a prominent media figure. As a result the new Premier of NSW, Mike Baird, agreed to visit Bulga and talk with the community about its concerns over the MTW mine expansion.

We've known Rod McGeoch for 20 odd years and McGeoch wrote to Alan Jones and said to him look, this is ridiculous, this people are being knocked around, they've had this judgment and we went through the judgment with and Jones took it up. Jones then got on to the Premier. So he got on to Baird and he gave Baird a hard time. Why aren't you involved with this? Now he put the pressure on Baird to come and visit us...(Al, *personal interview September 2015*)

Then Alan Jones actually got Baird on radio to say, yes I will walk the land with the people of Bulga. (Jess, *personal interview September 2015*)

⁴⁰ The 04 March 2015 recommendation for approval by the PAC included the following statements: Options recommended by the Commission for consideration include compensating property owners for actual loss in property values, or relocating the village...the Commission considers that the unique and unusual set of circumstances that apply in this case warrants serious consideration of these options.

The BMPA were under no illusions that it was their own doing. They were very aware that the positive result achieved was due to connections they had made soliciting others in the media on their behalf to take up their case and push for the NSW Government to respond.

So that's how that came about...but nevertheless it wasn't the pressure from us that got that meeting, it was the fact we knew someone who knew someone who could pressure someone who can have some result from the Premier that we got that meeting. (AI, *personal interview September 2015*)

The re-scaling of their discourse to the state level by means of creating a space of engagement that encompassed individuals who could provide access to wider media arenas was a successful strategy that resulted in a review of the SEPP amendment by the Minister for Planning, Rob Stokes.

Now within three days, that was a Tuesday, within three days I think, Stokes announced that he would review the SEPP amendment. Now whether the meetings with us and the mines or whatever concreted his view that they needed to do something, I don't know... (AI, *personal interview September 2015*)

This review by the Minister would result in the SEPP being amended again, this time reverting back to its previous form with an equal emphasis on the economic, environmental and social impacts of a development. As a result of this amendment and its retrograde application to the MTW mine expansion, the DoPE was required to hold yet another PAC hearing, affording the BMPA and community of Bulga another opportunity to fight the expansion.

Along with a push to directly engage with the press, the BMPA members also worked to create situations that would attract media attention. They staged protests, organized bus

tours from Sydney to Bulga to showcase the village, wrote op-eds for local newspapers and agreed to meet with numerous researchers (of whom I am one) to discuss what was happening with Bulga and the MTW mine expansion. The protests were easily the most visible of the BMPA's efforts and they re-enforced this visibility with a campaign to get as many people there to support them as possible. To this end, they sent out bulk emails to groups and individuals, including parliament members, who they felt would be sympathetic to their struggle and advertised the protests on their social media and webpage. Their campaign strategies focused on the NSW Government's betrayal of them as citizens and the lack of recognition of their legitimate concerns about the impact of the MTW mine on their village and lives.

The strategy to get public support and raise Bulga's profile worked brilliantly. At a protest outside of the NSW Supreme Court, more than 200 people attended to show support for Bulga. The protest featured a 2 metre high mock-up of the 'scales of justice' which the BMPA had showing coal as the winner over their village. The size of the rally, along with the location, ensured that the community received significant news coverage at local, state and national levels.⁴¹⁴² (See Image 7.1) In this way, the BMPA had managed to rescale their strategically constructed narrative of government betrayal and corruption and upscale it from the local to the state and national levels of exposure.

⁴¹ <https://au.news.yahoo.com/video/watch/30078927/the-fight-to-save-hunter-valley-village-bulga-is-not-over-yet/#page1>

⁴² <http://www.singletonargus.com.au/story/3487977/rally-to-save-bulga/>



Figure 7.1 Bulga justice protest⁴³

Residents of Bulga also strove to engage as individuals with the wider scales. One resident wrote multiple op-eds for a newspaper in Newcastle, NSW, a medium-sized city located in the Upper Hunter Valley⁴⁴. (See Image 7.2) She used the opportunity to paint a human face on the community of Bulga, stressed the importance of place and addressed the community's concerns about the undemocratic nature of the NSW Planning system. In doing so, she was re-scaling the story of Bulga and making it relatable and accessible to the broader Upper Hunter Valley community, moving it from a local issue to a State concern.

⁴³ <http://www.singletonargus.com.au/story/3487977/rally-to-save-bulga/>

⁴⁴ <http://www.theherald.com.au/story/3202891/opinion-a-chance-to-right-the-wrongs-of-the-past/>



Figure 7.2 Bulga resident op-ed in Newcastle Herald

The success of the BMPA's media strategy can be seen by the NSW Greens party's decision in June of 2016⁴⁵ to launch their local campaign in Bulga.

Bulga was chosen as the ideal location to launch the Greens campaign for Hunter. No village in the state, or perhaps even the nation has attained such notoriety for its campaign against the expansion of an open cut mine. The village symbolizes for the Greens everything that is wrong with government policy, state and federal, when it comes to planning and the dominance of the mining lobby.⁴⁶

⁴⁵ <http://www.theherald.com.au/story/3957985/greens-launch-hunter-campaign-in-bulga/?cs=1534>

⁴⁶ <http://www.singletonargus.com.au/story/3957985/greens-launch-hunter-campaign-in-bulga/>

While the BMPA on their own did successfully exploit the media exposure they were able to obtain to 'jump scale' and re-articulate their discourse, they found this much easier after they allied themselves with the grassroots conservation group, Lock the Gate.

7.4 Lock the Gate

Lock the Gate started as a grassroots movement in response to the rapid development of coal and coal seam gas in New South Wales and Queensland. Their official website provides the following description of the group.

The Lock the Gate campaign was launched on 22 November 2010 when farmers from south-east Queensland gathered in Brisbane around a farm gate, vowing to take a stand to protect their farms and communities from inappropriate mining.

Lock the Gate Alliance was incorporated in NSW on 8th December 2010 and became a registered company limited by guarantee under the Corporations Act 2001, on 6th March 2012. The inaugural AGM was held in Murwillumbah on 11 June 2011, and the second AGM was held in Newcastle on 15 September 2012.

Lock the Gate continues to grow as a diverse grass roots community movement working to protect land and water resources from mining impacts.⁴⁷

Lock the Gate operates nationally across Australia and works with communities to protect local land and environments from companies and governments that would seek to develop these in ways not favoured by the communities (Hutton, 2012). While not strictly an environmental NGO, it does work with landowners and communities to protect their homes and livelihoods from the impacts of natural resource extraction. Initially, the BMPA had shied away from groups like Lock the Gate as they preferred not to be identified as activists but instead as a community association. They had wanted to avoid the potential reduction in credibility that could potentially come from being associated with groups painted as 'greenie

⁴⁷ http://www.lockthegate.org.au/about_us

activists' in the broader National narrative, as well as keeping a cohesive front for their community, as many residents were employed by local mines in the area. However, following on from their L&EC win and the NSW Governments legislative amendments afterwards, the BMPA decided to engage with Lock the Gate to access their media connections, although they were initially somewhat sceptical about the group's reason for assisting them and their concern about being labelled 'greenies' was soon legitimized. However, they were no longer worried about the label as the BMPA had begun to realise who they were up against.

Won the Land Environment Court I think and also, I mean not being unkind but I think they (Lock the Gate) saw success here and it was in line with their own views of the world, so they sort of you might say cash in on it. *(AI, personal interview September 2015)*

And we were accused by the Minerals Council of, you know accepting or joining with the green riff raff in other words and I said to whoever asked the question, yeah but it means we're fighting state government and Rio Tinto, we'll take help from the devil, we'll take help from anyone. Because we don't have resources both technical resources or financial resources...we need more help ... *(AI, personal interview September 2015)*

Despite their initial reservations, the BMPA has found the connection extremely useful. Connecting with the media and getting the exposure the BMPA needs to continue to fight the MTW mine expansion was not easy on their own as a community association. Lock the Gate operates nationally and has a significant media presence. The BMPA chose to remain in regular contact with them and this facilitated their ability to resist the MTW mine expansion through the use of media releases that present their struggle.

It's a very difficult, very difficult job to do -- to get into the media. Media will come to you when they want a story that's fair enough and they see something in someone else's headline, but for you to actually get media come on board and to do a proper press, all that sort of stuff is a separate skill. *(AI, personal interview September 2015)*

And that's been the big advantage with Lock the Gate....is that they have people like Allison Orm. Allison is ex media director...We get text here past 6 in the morning saying, can you do an interview with -- or whatever it is and she's very good. So that sort of help as being really valuable to us. *(AI, personal interview September 2015)*

The importance ascribed by the BMPA to this access to the media as a means of resistance could be seen when AI, a BMPA member, addressed the broader community's concerns about the BMPA's association with Lock the Gate. To do so, he spoke to their struggle to get the media attention they seek to promote their cause.

...a local or a couple of our people you say, why are we involved in Lock the Gate? We can do it ourselves - the media - well all you do is phone up the television station and tell them, I know you do it, see how far you get. (AI, *personal interview September 2015*)

Lock the Gate had a formal website⁴⁸ as well as a FaceBook⁴⁹ page. Given the nation-wide nature of the group, Lock the Gate had the ability to spread news of the BMPA's L&EC win, as well as their subsequent betrayal by the NSW Government in favour of Rio Tinto and the ultimate approval of the MTW mine expansion all over Australia. This was invaluable to the BMPA as a means of resistance in that it promoted their fight against Rio Tinto, the DoPE and the NSW Government and presented that information to individuals and groups who would be receptive to helping them. This worked extremely well for the BMPA when they chose to hold protests against Rio Tinto and the DoPE in Sydney, NSW which lies approximately three hours east of Bulga. The 'New Bulga' protest held in front of the NSW Parliament in Sydney was promoted on the Lock the Gate FaceBook page and was so well attended that the local ABC news team showed up to film a media piece which was then shown nationally. (See Image 7.3)

⁴⁸ <http://www.lockthegate.org.au/>

⁴⁹ <https://www.facebook.com/Lock.The.Gate.Alliance/?fref=ts>

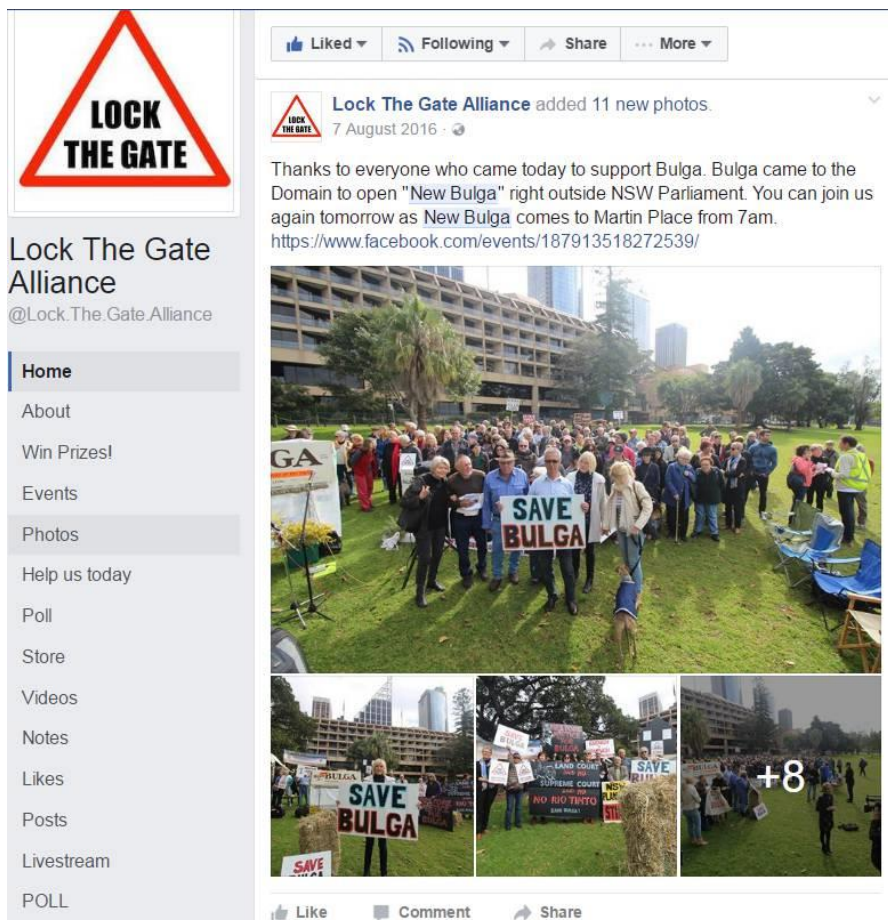


Figure 7.3 Lock the Gate FaceBook promotion of Bulga protest

Lock the Gate's ties to a range of other community groups in the Hunter Valley resisting Coal Seam Gas exploration or other coal mine approvals provided a larger narrative of government wrong-doing and bias, one that the BMPA could then leverage to promote their own cause. The ability to argue that it was not just Bulga that was being affected by the NSW Government's drive to approve mines work to refute the potential charge of NIMBYism that could have been levelled at Bulga; they were not the only ones under attack and fighting to

protect their homes. This linked the NSW Government's legislative amendments after the BMPA's L&EC win, particularly the removal of merits review which would affect any community in NSW, with a wider concern. The NSW Government had responded to the BMPA's legitimate engagement in the EIA process by denying them and every other community the basic right to appeal decisions. However, as a result, Bulga's fight triggered similar concerns across all rural communities. Thus, the association with Lock the Gate allowed the BMPA to move, once again, onto a broader, intensely political, stage. Engaging with this wider narrative meant that the discourse promoted by the BMPA that depicted the Hunter Valley as being under threat from resource companies and a state government driven purely by the desire for economic gain, was valid, justifying their struggles and widening the appeal of their cause, as shown by public comments on LTG's Facebook page.

I hope this event shuts down all traffic in Sydney for hours & then this State Govt may heed the will of the people instead of multi nationals BTW I live in Mount Isa & wish I could attend this event.

Brilliant! Well done, you Bulgas!!! You've followed all legal processes. AND WON, mind you. Done the correct thing and still...still they abuse their power. And they wonder why we resort to such measures⁵⁰

The BMPA has worked to leverage this additional exposure and broader narrative in an attempt to prevent the destruction of their village. By aligning with Lock the Gate and working to identify themselves with other communities within the Hunter Valley, the BMPA hoped to put enough public pressure on the NSW Government to ensure that the approval decision was revoked and the MTW mine extension then halted. Linking the destruction of Bulga into an environmental discourse that encompasses the ruination of the entire Hunter Valley ecosystems and landscapes provides a stronger argument with which to fight the MTW mine expansion than that of the village of Bulga alone. Fighting the new legislation

⁵⁰ <https://www.facebook.com/Lock.The.Gate.Alliance/?fref=ts>

preventing the exercise of full legal rights through merits review could then paint the BMPA as all communities' champions for democratic rights. Up-scaling their conflict with Rio Tinto and the NSW Government in this way served to mediate accusations of NIMBYism and provided the BMPA with an opportunity to exert control over a discourse that engaged with the moral and ethical responsibilities of government.

7.5 The Fight for Right: Citizen and Activist Re-Framed

The NSW Government's legislative amendments following the BMPA's L&EC win along with their documented collusion⁵¹ with Rio Tinto, infuriated the BMPA and the community of Bulga. They felt that the NSW Government had abdicated its responsibility to protect its citizens and the environment from harm and was instead focused entirely on profits and personal gain. In order to engage more fully in the conflict with Rio Tinto and the DoPE over the MTW mine expansion, the BMPA 'jumped scale' using a narrative that introduced climate change. This was something they had previously kept away from due to its contentious nature, similar to their initial reluctance to engage with environmental groups, as they initially wanted to keep the focus on their small community.

And I think a year has made quite a difference because I think four or five, oh we started six years ago but five, five years ago we kept away from the global warming bit because it was very contentious and, you know we wanted to concentrate on our particular problem which wasn't the world it was Bulga. *(AI, personal interview September 2015)*

Feeling stymied by the legislative changes and the constant defeat at the hands of a government who altered legislation to keep the mines ahead of the game in NSW, the BMPA used the climate change narrative to link their small village to the broad global warming narrative. Pushing the idea that a rapacious NSW Government was prepared to put

⁵¹ <http://www.smh.com.au/environment/rio-tinto-linked-to-collusion-on-warkworth-coalmine-20141212-1267rh>

resources income before people, the BMPA stressed that the coal from the MTW mine was being exported abroad. This meant that locals gained nothing from it in terms of energy, plus the resultant pollution was occurring in places like China, which was already suffering the effects of air pollution. The BMPA used the climate change discourse to show that they were concerned about more than just their village; it was the health of the global environment at stake as well.

That to me is sinister, truly sinister. Why would you do that? It's wrong. It's plainly wrong. I don't care if we're only one per cent of the world's emissions. I know that. I don't care. (*Lori, personal interview October 2014*)

I know why they can, because they don't live in these areas, they're not affected by them and they don't care, and as I say, if the gain for Australia was that wonderful versus a very small loss, I'd say I sort of understand, but I don't. I'm just sickened by it. As I say, to me it's sinister that you would still do this knowing what you're doing. (*Lori, personal interview October 2014*)

But not the externalised costs associated with the filling of the final void, the costs of the health impacts caused by the mining and burning of coal in NSW, the greenhouse emissions from the extracted coal that is burnt overseas. (*Ben, letter to PAC November 2015*)

As discussed in Chapter Four, mining remains a contentious issue in Australia, particularly coal mining and the fact that MTW was a coal mine greatly facilitated this narrative, keeping the Bulga fight against the MTW mine expansion very much in the public eye.

A lot of the big guns are now sort of joining with us and, and saying yeah look this is enough you got to stop this. And I think it's probably because of the publicity around the future for coal.... this thing with all the banks where the banks are now going away from some of these the polluting companies⁵². And I think there's a whole movement which you're saying coal is bad....I think a lot of them who had this wanted to say something before and now saying look, we've really got to get behind this because the world is sort of moving our way. (*Al, personal interview September 2015*)

Along with promulgating a climate change narrative, the BMPA promoted a narrative that placed them as defenders of the environment and other small villages. This narrative worked

⁵² <http://fortune.com/2016/03/21/coal-losing-lending-credit/>

across multiple scales, from local to national and was driven by the BMPA's promotion of themselves as battling for every village through grass-root community groups like Lock the Gate and interviews with the local, state and national press.

....has spent much of the last three years trying to stop the mine expansion from going ahead. As I sat with him on his veranda in Bulga, I asked him if the 350 living here were really more important than the hundreds of employees working at the mine, and the billions of dollars it would generate.

'No, it's not a matter of importance. The mines should not be planned such that they impinge or infringe upon residential communities," he said. 'As the judge said, it's not a matter of dollar values; you've got to protect people's lifestyles. Otherwise, the whole of Australia becomes a mine.'⁵³

Two judges have ruled that the project has unacceptable impacts on our community, yet the Coalition government, working in lockstep with greedy mining giant Rio Tinto, has managed to dodge new rules and push it through regardless...We need much stronger government action to protect communities like ours, and the environment, from the destructive impacts of coal mining. In the Hunter Valley communities such as Camberwell and Wollar face mine expansions, while the beautiful Bylong Valley is a risk of being dug up for a new, open cut coal mine.⁵⁴

The BMPA's success in the L&EC led to them receiving requests from other community groups to help them put a strategy together to defeat a major development occurring in their own communities. Their own 'battler' narrative had 'jumped scale' and had resulted in communities from across Australia contacting the BMPA members and asking for help.

Yeah. It's for small groups and we get calls from lots of groups say "Can you help us put a strategy together" and it's very difficult...But you're telling a small group to get media on your side they'll come back and ask how do you do that? (Al, *personal interview September 2015*)

It's been amazing the other communities that have come to Al and asked advice. Of course he's got to help them so again that's another thing as well, going to meetings with them and people coming up here. It's great that he can actually impart that knowledge and you feel so sorry for those people. You think oh my god you're just starting now. So they've read of our successes and said right it can be done....(Jess, *personal interview October 2014*)

⁵³ <http://www.abc.net.au/radionational/programs/backgroundbriefing/2013-07-14/4812258>

⁵⁴ <http://www.savebulga.org.au/rio-tinto-warkworth-mine-win-robs-bulga-of-justice/>

The BMPA's promotion of themselves as fighting the NSW Government for the rights they expected to have as citizens and as defenders of the people are part of their claiming of the term 'activist'.

We've been called locusts and activists - not, activists is actually a very good word, I've looked that up in the dictionary...I don't mind being an activist actually. I'm quite proud of it. *(Jess, personal interview October 2014)*

By embracing the 'activist' label, the BMPA has been able to ramp up their challenge to the DoPE and NSW Government over the approval of the MTW mine expansion. Protesting, writing op-eds, and engaging the media in whatever way is available to them has caused concern among the DoPE and the NSW Government as the effects of the BMPA's re-scaling their citizens and activists discourse took hold across scales.

And also the chappy who was within government, he said to me which surprised me. He said "The Department of Planning is dead scared of you blokes because of what you have done so far and what you have the potential to do."

So, he said "They're pretty concerned about you guys" and that that makes us laugh. You know we're a bunch of old fogies on walking frames then they're going to scare the hell out of Department of Planning. That's ridiculous.

Yeah I think so, yeah I think they're realizing that someone is actually holding them to account and they're not coming up too well. *(Al, personal interview September 2015)*

The BMPA amplified this narrative through the creation of the 'Bulga Declaration' which stated the group's intent to protect not only Bulga, but all communities affected by rampant development and a corrupt government.

By siding with Rio Tinto to subvert the people's victory in court, the government has crossed a line. Now we are the ones that will uphold fairness, protect the ridge and restore faith in organised community.⁵⁵

⁵⁵ <http://www.savebulga.org.au/bulga-declaration/>

7.6 Conclusion

The BMPA's ability to re-scale their discourse and enter spaces of engagement that existed at different levels reflected the power inherent in their discourse. By aligning their discourse with ideas that evoked citizens' rights, governmental responsibilities, democracy, justice and environmental protection, the BMPA was able to promulgate a discourse that resonated across scales. This ability was enhanced by their strategy to actively engage with the media and embrace the grass-roots environmental groups they had previously avoided. Having decided to claim the label of activist and fight for their right to be respected as citizens, the BMPA's discourse functioned as a moral claim, one that painted them as defenders of not only their community, but all communities. The new 'Bulga Declaration' created by the BMPA re-enforced this, as did their commitment to the fight against Rio Tinto, the DoPE and the NSW Government at all costs.

Chapter Eight:

Politics, power and technologies of government in the EIA process

8.1 Introduction

This chapter explores the political background and influence surrounding the MTW coal mine expansion development process. It describes how the NSW Government and its DoPE worked with Rio Tinto to facilitate approval of the MTW mine expansion. It examines how the NSW Government altered planning legislation based on recommendations from Rio Tinto, and restricted access to information and avenues for engagement for the community of Bulga in the EIA process.

Drawing on Foucault's (Foucault et al., 1991) notion of governmentality and his idea of technologies of government, this chapter explores the ways and means by which the NSW Government utilised technologies of government to restrict and control the community of Bulga's ability to engage with the EIA process. It unpacks the changes to EIA legislation and process used by the NSW Government to dis-empower the Bulga community and invalidate their legal victories. In doing so, it illuminates how three specific legislative amendments became targeted technologies of government that conspired to marginalise the community of Bulga within the broader arena of the NSW planning process. Finally, this chapter delves into the ways in which the NSW Government, the DoPE and Rio Tinto worked to marginalise the community of Bulga's arguments against the MTW mine expansion. This was accomplished through the use of a discourse that rendered Bulga as the NIMBY 'other', painting the community as anti-employment, selfish individuals unconcerned with the negative impact on families due to the loss of the wider Singleton, NSW area jobs.

8.2 Technologies of government and governmentality

Technologies of government is an idea arising from Foucault's notion of governmentality. This was discussed in greater detail in Chapter Two, however, I will briefly re-iterate the

general concept to provide a clear context from which to engage with the topic.

Governmentality is the term Foucault used to refer to ‘the conduct of the conduct’ (Foucault et al., 1991). These are the methods and techniques through which the state seeks to control the population by inculcating certain specific forms of knowledge as ‘truth’ that result in self-regulating behaviours that fit these truth regimes. In effect, citizens recreate themselves by embracing subjectivities that echo these truths and act in accordance with these new subjectivities. The state creates spaces in which it can employ technologies of government used to direct and manage citizens and outcomes to its liking (Cornwall, 2004). Technologies of government come in many different forms and can be simple restrictions, like access to certain information, or more subtle constraints arising from propaganda that promotes a specific agenda over others on the basis of a moral or intellectual truth. The notion of governmentality can be used to problematize the ways in which the NSW Government and the DoPE employed technologies of government in the EIA process itself and within policy and legislation amendments. . The NSW Government employed many different technologies of government throughout the EIA process for the MTW mine expansion. Of key significance to the community of Bulga’s resistance to the Mount Thorley-Warkworth mine expansion were the removal of merits review, amendment of the State Environmental Planning Policy 2007 (Mining, Petroleum and Extractive Industries) 2007 (SEPP) to emphasis the economic benefits of a development and, finally, the significant change to the NSW Biodiversity Offsets Policy for Major Projects (henceforth, Biodiversity Offsets Policy), removing the need for ‘like for like’ offset swaps. Exploring these specific technologies of government allowed the EIA process to be problematized in line with a governmentality framing, illuminating the ways in which these technologies manifested as effects of power.

8.3 The EIA process: manipulation, control and access concerns in NSW

The suggestion that the EIA process, indeed most planning processes, is political is not novel or provocative. A significant number of academics have addressed this element in their own examinations of the process (See among others Cashmore and Axelsson, 2012, Richardson and Cashmore, 2011, Richardson, 1996, Richardson, 2005, Dabinett and Richardson, 1999, Bartlett and Kurian, 1999, Blowers and Leroy, 1994, Devlin and Yap, 2008). However, there are cases that have occurred within particular planning approval processes that have involved such overt political manoeuvring by government to secure a project's approval, they are uniquely positioned to illuminate the inequalities within these processes. The MTW mine expansion approval process is one of these cases. The EIA process in NSW, as described in Chapter Four, follows the standard structure for EIAs (see Figure 8.1).



Figure 8.1 Overview of EIA process

The EIA process is designed to facilitate the conditional approval, approval or disapproval of a major project based on information gathered by the proponent at the request of the government. This information is documented by the proponent in the EIS. The requirements for the content of the EIS are chosen by the planning department based on the type of development and its potential environmental impacts (usually with heavy reliance upon the

proponent's conception of the project and its associated benefits). Whilst best practice dictates that the public's concerns about a project's potential impacts also be included at this early stage (Sadler et al., 1999), this is often not followed, as is the case in NSW since there is no provision during this stage for public consultation. However, the public are allowed to comment on the draft EIS and the proponent is required to address comments from the public before submitting a final EIS to the planning department for their decision. This is the basic format for the EIA process and it also reflects the EIA process in NSW. In general, the MTW mine expansion application did adhere to this standard process.

What has not been standard about the MTW expansion process, however, is the way in which the NSW Government, the DoPE and Rio Tinto appear to have colluded to ensure the legitimate concerns of the Bulga residents were disregarded in order to achieve (eventual) approval of the expansion. In addition to participation rights under the EIA process the Bulga residents could also expect a fair right of appeal or review of the approval decision under broader administrative law principles. When the relevant application for a mine extension was lodged in 2010, the EIA process was implemented under former Part 3A of the EP&A Act, which required the Minister to take into account the findings of an environmental assessment of the project, along with the broader objects of the Act which included the promotion of 'economic use and development of land'. As detailed earlier (in Chapter Five), after a lengthy EIA process the NSW Minister for Planning and Infrastructure ultimately decided to approve the mine extension. At that time, the Bulga residents had a statutory right to appeal that decision 'on the merits' to the L&EC, under s 75L(3) of the EP&A Act. The residents' duly lodged an appeal which was determined in their favour by Chief Judge Brian Preston, who ruled on 15 April 2013, that that the Project would have significant and

unacceptable impacts on biological diversity, including on endangered ecological communities, noise impacts and social impacts (L&EC, 2013). The project proponent then exercised its own right of appeal, by seeking a review of the L&EC decision by the NSW Court of Appeal, however that court also found in favour of the residents (NSW, 2014)

While the EIA process as depicted was initially adhered to, significant changes were made to the process and its accompanying legislation as the NSW Government and Rio Tinto met with successful community resistance to the MTW mine expansion approval. These changes effectively reversed both court decisions and allowed the mine extension to proceed, despite the many flaws in the decision making process identified by the courts.

8.3.1 New South Wales Government: some relevant background

The NSW Government had a rather troubled past – suspected corruption was rife and so pervasive that a public body, the Independent Commission Against Corruption (ICAC), had been established by the NSW Government in 1988 to address the issue⁵⁶. At the same time the merits appeal by the BMPA was being held (2012-2013), an investigation into bribery and what could be termed ‘regulatory capture’ in the NSW Government was being conducted by the ICAC⁵⁷. Regulatory capture may be defined as the inappropriate identification of government officials with industry, resulting in the industry manipulating the regulatory body (Dal Bó, 2006). For a broader discussion of regulatory capture please see Chapter Four. The NSW Energy Minister at the time, Labour MP Ian MacDonald, was being investigated for accepting rewards or inducements from individuals in order to facilitate access to government for state mining and energy executives.⁵⁸ Edie Obeid, a

⁵⁶ <https://www.icac.nsw.gov.au/about-the-icac/overview>

⁵⁷ <https://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/186>

⁵⁸ <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/186>

former NSW Minister for Mineral Resources, was implicated and then charged with conspiracy after the ICAC found him guilty of corrupt dealings in the Mount Penny coal license affair. Obeid was to have benefited not only from the purchase of land the license covered after an insider tip, but also from hidden ownership in Cascade Coal, the company planning to mine the licensed area. Another former NSW Energy Minister, Liberal MP Chris Hartcher, was also being investigated by the ICAC for creating a political slush fund to channel political donations from mining and energy companies; several other Liberal MPs were also under investigation. With so many MPs under investigation by the ICAC, the Sydney Morning Herald ran an article in June 2015 discussing the links between the resource industry and the NSW Government that discussed the movement of government officials into well-paid industry jobs following their time in government.

....the state's coal companies employ some of the best connected lobbyists in NSW. The head of the NSW Minerals Council is Stephen Galilee, Mr Baird's former chief of staff. The Warkworth mine project is being represented by Endeavour Consulting, whose principals include Jeff Townsend, a former private secretary to Bob Hawke, Mark Baker, a former senior adviser to John Howard, and Paul Chamberlin, a former adviser to Nationals leaders John Anderson and Warren Truss.⁵⁹

The links between the NSW Government and resource companies, including Rio Tinto, suggests the possibility of significant regulatory capture. Regulatory capture within the state of NSW has a documented history, as in this comment by Doug Campbell, a former DoPE employee in his comments to the Senate.

A large, perhaps majority, of my colleagues at levels from local District Officers to Senior Executives were 'client captured' i.e. so immersed in the culture of the applicants that they deliberately or unintentionally acted on behalf of the applicant rather than the greater public good or society at large. (McGrath, 2014, p 17)

⁵⁹ <http://www.smh.com.au/nsw/rio-tintos-coal-mine-expansion-threatens-bulga-again-20150531-ghdftc.html>

This form of manipulation is reflective of a dominant discourse within the NSW Government that extols the virtues of the natural resource industry, resulting in government bureaucrats becoming entangled with resource companies to the extent that they appeared to be acting on behalf of these companies rather than acting in the interests of the NSW public. The pro-development discourse appeared to suggest that individual benefits would result should the bureaucrat operate on behalf of the resource companies, as is seen in the on-going ties to industry even after leaving government positions. Indeed, given the long list of NSW government officials that go on to work in senior positions for either resource companies or lobbying bodies supporting resource companies⁶⁰, it makes sense that ICAC said of the NSW Mining Act that the policy and regulatory environment surrounding the issuing of coal exploration licences and development approvals would be unlikely to be considered acceptable in any comparable state operation.

...the question facing the Commission was not simply how the state's policy and regulatory framework could allow coal ELs [exploration licences] of great value to be corruptly provided to favoured recipients, but how it could have been so easy to do so. It is inconceivable that in any other portfolio area of government such value could be corruptly transferred from the state to favoured individuals with such relative ease...This is not a policy and regulatory environment that would be considered acceptable in any comparable state operation.⁶¹

The impact of regulatory capture on decision making outcomes for major developments is significant. If the government officials making the decision to grant approval for a major development are 'client captured', as mentioned by Mr Campbell, then this throws into question the integrity and transparency of the EIA process. If the NSW Government is captured in this way, then control of the EIA process results in the process working not in an impartial manner, but in the interests of the government and the proponent. Statements

⁶⁰ <https://jeremybuckingham.org/2015/03/27/the-revolving-door-between-miners-and-government/>

⁶¹ NSW ICAC, [Reducing the opportunities and incentives for corruption in the state's management of coal resources](#), ICAC REPORT (2013) p6

from the NSW Mineral Council suggest that the NSW Government might be impacted by regulatory capture, as indicted by their involvement in the SEPP amendment.

"The Mining SEPP currently operates with other parts of the planning process to ensure a balance between economic, social and environmental factors. We will be participating constructively in the review process to ensure this balanced approach continues," said Minerals Council head, Stephen Galilee (former Chief of Staff of then Treasurer Mike Baird, who later became NSW Premier).⁶²

The comment by Stephen Galilee along with his close ties to the former NSW Premier Mike Baird suggested that the NSW Mineral Council might have access to government information and influence on government decision making that would not ordinarily be possible without those connections. Furthermore, collusion between the DoPE and Rio Tinto over the economic benefits analysis for the MTW mine expansion further reinforces the notion that regulatory capture has been a significant issue in the EIA process for the MTW mine. An inquiry by the Australia Institute revealed that Rio Tinto's claims regarding the MTW mine's economic benefits had not been reviewed or tested by the DoPE.

Economic analysis of the Mt Thorley-Warkworth expansion was called into question after it was revealed the Department of Planning misled the Planning and Assessment Commission by saying it had tested Rio Tinto's claims about the economic benefits of the mine when it had not....tried to access copies of the testing, only to discover that the only economic testing conducted was that submitted by Rio Tinto. A report from the Department of Planning provided to PAC said it had "tested the sensitivity" of Rio's own estimates of changes in the price of coal, with the conclusion that project benefits would remain positive even with significant changes in price. Documents from (Departmental consultant) Deloitte showed they had not tested for changes in the price of coal.⁶³

The apparent ties between the DoPE and Rio Tinto - further evidenced by their joint legal appeal against the 2013 L&EC ruling among others - led to legislative amendments that resulted in the approval of the MTW mine expansion, regardless of the outcome of two legal challenges which resulted in wins for the BMPA. These legislative amendments, including

⁶² <http://www.smh.com.au/nsw/rio-tintos-coal-mine-expansion-threatens-bulga-again-20150531-ghdftc.html>

⁶³ <https://www.australianmining.com.au/news/pac-misled-over-mt-thorley-warkworth-expansion>

the 2013 SEPP amendment discussed earlier, can be viewed as technologies of government employed by the NSW Government to limit the ways in which the BMPA and community of Bulga could engage with the EIA process for the MTW mine expansion. The following three sections discuss three key legislative amendments made during the MTW mine expansion EIA process and their impact as technologies of government on the community of Bulga and their ability to engage with the EIA process.

8.4 The State Environmental Planning Policy (SEPP) Amendment

The community of Bulga has spent nearly seven years trying to prevent the expansion of the MTW mine. They had initially attempted to do so through the formal participatory avenues available to them through the EIA process in NSW, believing that they would be able to influence decision making outcomes. The EIA process facilitates this belief by affording opportunities for citizens to engage with the process, suggesting that this engagement results in their voices being heard by a government that listens and responds to its citizens, as evidenced by the participatory opportunities inherent in the EIA process. The NSW Government is then able to point to the 'rigour' of the EIA process and its inclusiveness by noting the points of engagement available to the public and their use of the PAC as an ostensibly independent body that provided further transparency and autonomy within the decision making process.

The NSW Planning Assessment Commission is constituted under section 23B of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is an independent panel of experts in planning, architecture, the environment, urban design, land economics, traffic and transport, law, engineering, tourism, heritage or government and public administration. Section 23B of the EP&A Act sets out the functions of the Commission. The key functions include:

- To determine applications for major developments under delegation from the Minister;
- To review any major development including conducting of public hearings; and
- To provide independent expert advice on planning and development matters.⁶⁴

⁶⁴ <http://www.pac.nsw.gov.au/about-us>

The appearance of independence lent to the EIA process by the PAC had initially been viewed as a positive by the BMPA, who felt that the EIA process was enhanced by this opportunity to further present their case to independent arbiters. This assumption was challenged by the actual operation of the PAC, leading to the BMPA deciding that the PAC was not acting as an independent body.

At the PAC, when they introduced themselves, the PAC introduced themselves, they said we have met with the council, we have met with the mine and we are here to make an assessment. So when I got up I said I'm very happy that you met with the mine and the council but you didn't meet with us and they came after the hearing and said yeah we know that's a problem. So they've actually met with everyone else. They've not met with the people it affects most. *(Jess, personal interview October 2014)*

Despite their reservations about the 'independence' of the PAC committee, the BMPA did choose to engage repeatedly within the EIA process and submitted to and presented at multiple PAC hearings over the course of several years. In this sense, the NSW Government and the DoPE were successful in creating a type of 'EIA subjectivity' within the community of Bulga, as the community and the BMPA did 'play by the rules' over the course of the planning process. However, as discussed in Chapters Six and Seven, the BMPA and community of Bulga went on to resist this subjectivity by counter-acting it with a discourse that promoted their new construct of community citizenship and the accompanying discourse of them as the moral defenders of community rights.

Despite their initial willingness to engage with the EIA process, the outcome of a pivotal PAC meeting for the BMPA and community of Bulga, held in November 2011, which eventuated in the PAC recommending to approve the MTW mine expansion, started to ignite resistance. As a consequence of this decision, and the DoPE's subsequent decision to approve the MTW

mine, the BMPA decided, with the support of the residents of Bulga, to pursue a merits appeal of the decision at the L&EC. The outcome of the 2012-2013 legal challenge in the L&EC was a ruling overturning the DoPE's previous approval of the MTW mine expansion. The success of this legal action did not result in the MTW mine expansion being stopped, despite the legal ruling in the BMPA's favour, because of actions taken by the NSW Government and the DoPE, conjointly with Rio Tinto, to ensure that the expansion would go ahead. Please see Figure 5.3 for a comprehensive timeline of the EIA process for the MTW mine expansion.

The DoPE, along with Rio Tinto, mounted a legal appeal against the ruling at the Supreme Court, NSW in 2013. Concurrent with this, the NSW Government revised the mining State Environmental Planning Policy (SEPP) 2007, placing the emphasis for approval on the economic benefit of the resource, rather than equally on economic, environmental and social impacts as had previously been the case.

The potential investment and employment benefits for regional communities are now an important consideration when deciding on major mining projects in New South Wales. The new requirement is included in changes to the State's planning policy governing major mining projects (the Mining SEPP)....The changes outline key factors that decision makers must consider when establishing the significance of the mineral resource – namely the benefits that will flow to the economy via local job creation, regional expenditure and State royalties. The significance of the resource – as established by the Government, not the applicant – must then be carefully weighed against any potential environmental, social and amenity impacts. *NSW Government Media Release 4 November 2013*

The SEPP amendment applied to all current and previous approval applications and appeared to have been issued based on advice the NSW Government had received from Rio Tinto following the BMPA's L&EC win.

We understand the options include re-jigging a new development consent for the development while concurrently seeking a minor modification under the current development consent and/or amendments to the State Environment Planning Policy

('SEPP') to make the development the subject of the Warkworth Extension Project permissible without development consent when carried out in accordance with the now overturned Planning and Assessment Commission ('PAC') determination of 2012. Given the importance of working to identify a solution, we have sought legal advice on these options (see attachment which you will appreciate is strictly confidential) to gain a better understanding of the risks should Government proceed to accept these options. *Correspondence between Rio Tinto and NSW Government 13 May 2013*

This correspondence between the NSW Government and Rio Tinto was obtained by the Environmental Defenders Office, NSW (EDONSW) using a Freedom of Information (FOI) request. The letter not only shows that Rio Tinto is providing the NSW Government with legal advice to support a legislative amendment in their favour, but it goes on to discuss the BMPA's L&EC win and its implications on the mining industry investment in NSW and the potential economic effects.

As we and others in the NSW mining sector begin to understand the judgement in greater detail, it is becoming evident that it has far more wide ranging consequences than just in respect of the MTW Mine. The judgement sets a precedent with the potential to threaten all major project approvals and applications for State Significant development and therefore also threatens the broader economic development of the State. Having briefed the Rio Tinto Board and CEO on the judgement last week I can only reiterate their concern about the risks this judgement poses for other Rio Tinto projects in NSW and the need to identify a suitable solution in respect of it as quickly as possible. *Correspondence between Rio Tinto and NSW Government 13 May 2013*

The correspondence between Rio Tinto and the NSW Government also mentioned the interaction between Rio Tinto and the DoPE, further indication of the depth and breadth of access to key decision makers Rio Tinto was afforded by the state of NSW.

Since our meeting on 2 May 2013 we have had several discussions with the NSW Department of Planning & Infrastructure. While we remain grateful for the opportunity to provide input into the Department's development of options for Government consideration, we are concerned that some options being explored will not resolve the immediate issues facing the MTW Mine and may in fact further erode confidence in the ability of the NSW planning system to deliver timely and predictable outcomes for major projects. *Correspondence between Rio Tinto and NSW Government 13 May 2013*

This access to government decision makers was not extended to the BMPA or community of Bulga. On the contrary, one of the main issues raised repeatedly by the BMPA members was

the lack of equal access to NSW Government and the DoPE they were afforded compared to Rio Tinto.

...the mine came out and lodged an appeal in the Supreme Court against that judgment. The government followed it one week later and joined the mining company....I was very unhappy about that because I asked and I couldn't get hold of the minister because he wouldn't answer my calls....then we found out later....that the government had been working for the last two years with the mining company; the mining company's consultants; and the mining company's solicitors to overcome this court judgment. (Al, *personal interview October 2014*)

...they sent the head of the mining department, David Kitto....David said I've only got two hours so what did you want to do? I said well, I'd like to take you around and show you what our concerns are...So I explained a few things...I know all about that...he should have because he spent that much time in the office over here at Warkworth mine going through things with them, he should have known...Kitto had no intention of talking to us. His mind was made up at that stage. He had the hide and audacity to say that he spent a day talking to Al and myself - two hours is not a day. He was quite happy not to even talk to us. He didn't think the department had a need to talk to the community....he was up here constantly. Even went into bat for them. He can't deny that, he approached the council on an issue over the Wallaby Scrub Road which was right out of his jurisdiction. He shouldn't have had anything at all to do with that. Of course, he denied any impropriety there in doing that. But he did, he went into bat for them. (Ross, *personal interview October 2014*)

The inability of the BMPA to interact with governmental bodies involved in the decision making process for the MTW expansion, when viewed in comparison with the extraordinary access available to Rio Tinto, showed the extent to which they were marginalised in the EIA process. Not only was the NSW Government able to amend the SEPP in such a way as to privilege Rio Tinto, it also ensured that the BMPA was not afforded the opportunity to interact on equal footing with the proponent due to the restrictive technologies of government employed by the NSW Government and the DoPE. The end result meant that the BMPA and Bulga community's engagement with the EIA process was largely toothless, despite their repeated efforts to influence decision making in this way.

8.5 Revoking Merits Review – PAC Hearings now mandatory

The NSW Government's control over the EIA process and legislation governing it allowed them to go even further to ensure that the MTW expansion would eventually be approved. To secure this approval, they revoked of the possibility of merits review from the EIA process by mandating the PAC hold a hearing, not a meeting, for public comment. This not only ensured that the BMPA could not challenge any forthcoming approval for the MTW mine expansion, it also revoked that right for any other community or individual objecting to a development under consideration.

The means by which the revoking of merits review was accomplished were startlingly simple. As the legislation had always had a provision for the PAC to hold a hearing instead of a meeting, the NSW Government simply mandated that each time the PAC met, they must hold a hearing. The legislation as it existed revoked the possibility for merits review should the PAC hold a hearing.

Section 23D(1)(b)(iii) of the EP&A Act provides for the Minister or the Secretary of the Department of Planning and Environment to request the Commission to hold a public hearing into any planning or development matters.

A public hearing for a major development application, if held, can occur at any stage in the planning process. The Commission will provide a report with recommendations to the Minister/Secretary after the public hearing. The Department's assessment report is required to take into consideration the findings and recommendations of the Commission. The Commission's report will generally be published on its website within two weeks of its submission to the Minister/Secretary.

A public hearing removes third party merit appeal rights.⁶⁵

Insisting upon a PAC hearing was a simple way for the NSW Government to ensure control over approval outcomes by restricting the rights of citizens to challenge the merits of those

⁶⁵ <http://www.pac.nsw.gov.au/our-processes>

outcomes through legal means. The impact of this single mandate was enormous. Removal of merits review left those from Bulga and the BMPA with no further formal avenues to pursue within the EIA process and, in effect, drove them toward alternative means of engagement. By default, these alternative means of engagement existed outside of the EIA process and were forms of social protest and defiance, as discussed in Chapters Six and Seven.

The importance of merits review is that it “involves the re-exercise of the administrative power previously exercised by an original decision-maker such as a council, Minister or specialist planning body. The Court – in NSW, the Land and Environment Court – becomes the new decision-maker, having the same powers and functions as the original decision-maker. The Court can uphold the original decision, or overturn the decision and make a fresh one.”⁶⁶ A personal discussion with the CEO of the EDONSW sheds a further light on the significance of merits review as an exercise is preventing government corruption.

And one of the things that is really, really important and seems to, we try our hardest to remind the policy makers and the law makers that this is very important submission was made and that two years ago where the independent commission against corruption made its submission to the planning reforms in New South Wales and it said, actually merit appeal rights should actually be expanded in New South Wales because it's said they act as an anti-corruptions safeguard (*CEO of EDONSW, personal interview May 2015*)

Therefore, merits review was an important avenue for those communities negatively impacted by major developments, and one which the BMPA used to their advantage to overturn the DoPE approval of the MTW expansion in their 2013 L&EC win. The NSW Government and the DoPE decision in 2013 to instruct the PAC to hold new hearings following the BMPA's win at the L&EC ruling suggests that the NSW Government wanted to

⁶⁶ https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2998/attachments/original/1467777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?1467777537 page 6.

dissuade further legal challenges by communities against major developments. The insistence on a PAC hearing effectively removes the ability for communities to challenge decisions in court and provides the NSW Government and the DoPE with absolute control over the decision making outcomes, especially given that the PAC can only make recommendations.

... merits review is not available to any party if the decision was made after the Planning Assessment Commission (PAC) held a public hearing (this being done at the request of the Minister or the Secretary of the Department of Planning on a case by case basis)...the PAC provides a report with recommendations but there is no need for the decision-maker to follow its recommendations ... merits review is extinguished by the holding of a public hearing that has no decision making power over the determination outcome. *EDO NSW Merits Review in Planning Report July 2016*

According to the Administrative Review Council (1999)⁶⁷, merits review aims to ensure that administrative decisions are correct (i.e. made according to law) and preferable (being the best decision that could have been made on the basis of the relevant facts). Merits review also serves to improve the quality and consistency of administrative decision making. As a matter of principle, all administrative decisions that are likely to adversely affect the interests of a person should be subject to merits review. This principle clearly applies to decisions to allow extensive resource extraction activities that may have severe impacts upon local residents, as well as the broader community's interest in conservation of endangered ecosystems, which is why merits review was initially provided under the NSW EPA Act. Despite these ideals, all Australian governments have exerted undue control over major project approvals through limiting the availability of merits review, and the NSW model was actually more benevolent than other jurisdictions in this respect (Bonyhady and Macintosh, 2010 at 200).

⁶⁷<http://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/Whatdecisionsshouldbesubjectto meritreview1999.aspx#dec7>

As the PAC operates as an independent entity from the DoPE, this allows the DoPE to construct a discourse that promotes the independence of the PAC from the decision making process, thus allowing them to be seen as neutral arbiters in their recommendations. This discourse is reflected in the PAC website.

The NSW Planning Assessment Commission is constituted under Schedule 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is an independent panel of experts in planning, architecture, the environment, urban design, land economics, traffic and transport, law, engineering, tourism, heritage or government and public administration.⁶⁸

By promoting the idea that the PAC is independent and without vested interest in their decision making recommendations, the DoPE has constructed a narrative that allowed them to make claims to neutrality as they would be taking advice from the PAC before making the final decision on projects. The neutrality claimed by the DoPE functions as an effect of power in that it promulgates a claim that works to inhibit the opposition to decision making outcomes by suggesting a transparency and accountability to the public in a fair and just EIA process. The idea of the DoPE as neutral within the MTW mine expansion is challenged by their actions at the PAC hearing occurring after the 2013 SEPP amendments, in which clause 12AA (which had introduced the focus on economic interest) was revoked in 2015 and the SEPP was returned to its original form, returning to an equal emphasis on the economic, environmental, and social impacts of a development being considered. Having reverted back to the original SEPP following the L&EC win by the BMPA, an assumption could be made that, as the project remained the same and the SEPP was now as it was before when the court win happened, the project approval would be overturned and the mine expansion halted. This was not the case.

⁶⁸ <http://www.pac.nsw.gov.au/about-us>

The DoPE worked to ensure that the PAC was aware of the DoPE's opinion that, regardless of the SEPP reversal, the MTW mine expansion should be approved as the removal of clause 12AA should make no difference to the decision outcome. A letter sent from the DoPE to the PAC confirmed the DoPE opinion.

...the Department considers it appropriate, in drawing the PAC's attention to the Draft Mining SEPP Amendment, to confirm that the Department's consideration of resource significance in its assessment of the project has not overridden or excluded other considerations under the Mining SEPP or the EP&A Act, including the objects of the Act and the matters listed in section 79C of the EP&A Act.

The Department considers that the Draft Mining SEPP Amendment does not change the conclusions of the Department's assessment or its recommended conditions, and would not change the conclusions of the Department's assessment or its recommended conditions if the Draft Mining SEPP Amendment was made before the application was determined.

....the Department remains of the view that the project is consistent with the aims of the Mining SEPP, that the resource on the subject site is significant, and that the extraction of the resource would result in a number of substantial social and economic benefits for the region and the State as a whole. This is so even if the significance of the resource is not the consent authority's principal consideration under the Mining SEPP. *Letter from Marcus Ray, Deputy Director, Planning Services to the Chair of the PAC 7 July 2015*

The letter to the Chair of the PAC concluded with the DoPE reiterating that they felt their prior decision to approve the MTW mine expansion was correct, regardless of the reversal of the SEPP amendment and the Land and Environment court decision.

When balancing these matters against the other considerations for the project, and in the context of the Department's assessment of the project as a whole, and now having taken the Draft Mining SEPP Amendment into account, the Department remains satisfied that the assessed benefits of the Warkworth Continuation Project outweigh its assessed impacts and costs, and that the project is in the public interest and should be approved, subject to the conditions which the Department has provided to the PAC previously. *Letter from Marcus Ray, Deputy Director, Planning Services to the Chair of the PAC 7 July 2015*

The DoPE had the ability to access and influence the PAC decision making process in a way that the BMPA and the community of Bulga did not. This form of access restriction was used

by the DoPE and the NSW Government to successfully limit the ability of the BMPA and the community of Bulga to engage with the EIA process and avenues of appeal, and therefore, to effect any significant influence on decision making outcomes. As such, despite the appearance of multiple avenues of engagement, suggestive of a level playing field in which the public could have equal input and influence, the EIA process operated in reality to privilege the proponent over the public. An analysis of the word frequency count (top 25 words) occurring in correspondence between the NSW Government and Rio Tinto suggests support for this idea, as the community and its concerns are not raised at all (Figure 8.2). The conversations between the NSW Government and Rio Tinto clearly reflect a discourse focused on the MTW development, application process and court cases. There is no evidence of discussion of the impact on the community of Bulga or the expected environmental and social impacts resulting from the MTW expansion in any of the correspondence between Rio Tinto and the NSW Government or the DoPE.



Figure 8.2 NSW Government and Rio Tinto correspondence Word Cloud

While this does not preclude a discussion of these social and environmental impacts between Rio Tinto and the NSW Government in other unseen correspondence, the correspondence available for analysis has been remarkably devoid of such concerns. This contrasted starkly with the submissions made to the PAC by the BMPA and the community of Bulga members, with the top 25 words shown in Figure 8.3.



Figure 8.3 PAC submissions by the BMPA and Bulga Community

In their submissions to the PAC, the BMPA and community of Bulga mentioned their concerns surrounding the impacts of the mine on their village, including significant concerns about noise from the mine. The difference between the two word clouds is reflective of the emphasis each group placed on the MTW expansion project and its potential impacts. The significance of these differences lies in the inequality of access to decision makers within the DoPE and the NSW Government. The privileging of Rio Tinto in terms of access ensures that

the desires of the proponent are afforded more consideration than those of the broader community and the BMPA.

As shown by Aitken (2010), Armstrong (2012), and Head (2007) among many, control over information and access to key decision makers is an effective technology of government when used by governments determined to obtain a desired planning outcome. The NSW Government and the DoPE went to great lengths to exert control of the planning outcome for the MTW mine expansion, exploiting their ability to amend legislation and introduce restrictive planning instruments to ensure an approval.

We believe that there's a lot of corruption actually. We believe that the mines and the minerals or councils have for decades just put in for an approval and it's been approved, no questions asked. We've already been to the Department of Planning and said we believe they're corrupt...We believe it's corrupt and anytime there's success they're very quick to put in a law or another hurdle for us to cross. *(Jess, personal interview October 2014)*

The community consultation process for the SEPP amendment revealed similar concerns:

So we set about fighting that. In fact the government put it out for comment, as they do, and it was out for something like two weeks. They had two or three hundred submissions, most of which were against it (SEPP amendment). Two weeks. So we made all these submissions. Everyone frantically got together, put submissions through and, of course, when the SEPP amendment when it came out finally it was exactly the same as the draft they put out. So we realised that the government wasn't taking any notice of anybody. That was what they wanted and they were going to get it out. *(Al, personal interview October 2014)*

As a result, the community of Bulga and the BMPA were left with their experience of engagement within the EIA process as a time-consuming, expensive and, ultimately, futile exercise despite the appearance of multiple points of engagement.

8.6 Changes to the Biodiversity Offsets Policy

A further key change to legislation made by the NSW Government was the introduction of the NSW Biodiversity Offsets Policy for Major Projects in October 2014. This initiative echoes

the introduction of, and amendment to, biodiversity offsets in other Australian states, as well as in 2012, the Australian Government's offset policy changes. The basic premise of environmental offsets is to preserve a landscape and ecosystem similar to one being unavoidably destroyed during a major development, like a coal mine or dam. The Australian Government defines an environmental offset in the Environmental Protection and Biodiversity Conservation Act 1999 (EPBA Act) as follows.

The term 'environmental offsets' refers to measures that compensate for the residual adverse impacts of an action on the environment. Offsets provide environmental benefits to counterbalance the impacts that remain after avoidance and mitigation measures. These remaining, unavoidable impacts are termed 'residual impacts'.⁶⁹

As discussed in Chapter Four, the Australian Government and the Australian States have a bilateral agreement governing environmental offsets, that allows each State to determine whether offsets are appropriate and in what form. Aside from matters of National Significance and those on Commonwealth property (see Chapter Four), the Australian Government has no influence over what environmental offsets policy each State operates under, and there can be significant differences in how offsets are managed. For instance, the EPBC Act insists that environmental offsets operate under a 'like for like' principle.

In no instances will trading offsets across different protected matters be considered as a suitable offset. That is, where an action impacts on a specific threatened or migratory species, ecological community, Ramsar wetland or heritage property, any offset must relate to that same specific matter which is impacted.⁷⁰

The NSW Government, however, has chosen to remove the requirement for a 'like for like' offset. It offers instead a broader definition for what might constitute an environmental offset in its Offsets Policy.

⁶⁹ http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy_2.pdf p.7

⁷⁰ http://www.environment.gov.au/system/files/resources/12630bb4-2c10-4c8e-815f-2d7862bf87e7/files/offsets-policy_2.pdf p.17

Offsets: areas of land that are protected and managed to improve biodiversity values. Requirements for offsets are determined using an objective assessment of predicted loss of biodiversity at the development site and expected gain in biodiversity to be achieved at the offset site. Rehabilitation of a mine site, as described under this policy, can be included as an offset.⁷¹

Additionally, the Offsets Policy allows for substitution of alternate biodiversity proposals in order to afford greater flexibility for proponents of major projects who might not otherwise be able to proceed with a development.

Offsets must have a relationship to the biodiversity values being lost. Under the policy, where a proponent has demonstrated that they are unable to locate like-for-like offsets, offsets can be targeted to a similar or higher conservation priority, but will still need to have a relationship to the biodiversity being lost. Allowing variations to entities that can fulfil the offset requirements provides greater flexibility for proponents and recognises that exactly the same biodiversity is not always available for an offset. The policy recognises that protecting and improving biodiversity that is of similar value but under the same or a greater level of threat can also provide beneficial outcomes for NSW.⁷²

While touted as a way to provide greater clarity and improve biodiversity offsetting for major projects⁷³, it states as one of its goals “providing a practical and achievable offset scheme for proponents”. The policy goes on to state that it “...provides a transparent and repeatable method for assessing impacts on biodiversity. This will help avoid protracted debates and negotiations about information used to assess biodiversity impacts, which can be time-consuming and a burden on government and proponent resources.⁷⁴” The Offsets Policy applies this principle of reducing the burden on proponent by amending the ‘like-for-like’ requirement for offsets.

Variations to like-for-like requirement – recognising that exactly the same biodiversity is not always available for an offset, the policy allows for variations in the ‘like-for-like’ requirement so offsets do not always need to be strictly matched to the biodiversity impacted on, but can be targeted to relevant equal or higher conservation priorities. Variation rules can be applied only after all reasonable steps have been taken to satisfy the like-for-like offset requirements.⁷⁵

⁷¹ <http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf> p.6

⁷² <http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf> p.10-11

⁷³ <http://www.environment.nsw.gov.au/biodivoffsets/biooffsetspol.htm> p.6

⁷⁴ <http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf> p. 7

⁷⁵ <http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf> p. 8

This concept of aiding proponents continues throughout the policy, even when addressing the issue of threatened species.

Threatened species – in certain circumstances, a species can be offset on a basis that is not strictly like-for-like, provided it is not critically endangered or listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. In these circumstances, a species can be offset with a similar species in the locality that is under the same or a greater level of threat... Broadening the scope of entities that can fulfil the offset requirements provides greater flexibility for proponents and recognises that exactly the same biodiversity is not always available for an offset. The policy recognises that protecting and improving biodiversity that is of similar value but under a greater level of threat can also provide beneficial outcomes for NSW.⁷⁶

The changes to the Offsets Policy, issued in October 2014, approximately 18 months after the landmark ruling at the L&EC, were a major blow to the BMPA and the community of Bulga. In the ongoing fight against the MTW mine expansion, a key argument employed by the BMPA was the threatened status of the Warkworth Sand Woods (WSW). The WSW had been a particular sticking point with Rio Tinto's previous application for the MTW expansion. Located only in that area of the Upper Hunter Valley, the WSW were a critically endangered ecosystem and entirely unique in the world, although, significantly, not recognised as such by the Australian Government and therefore not protected under the EPBC Act. Despite over a decade of funding by Rio Tinto to the University of New England to replicate the woodlands, no significant progress had been made and, as such, it was not possible to reproduce the WSW elsewhere in NSW. Rio Tinto planned to mine through a significant portion of the remaining woodlands (67.8 hectares), an area that had been declared conservation land in the previous 2003 MTW mine expansion application. Rio Tinto's plan to mine through this area of WSW was one of the more contentious elements of the MTW mine expansion and one of the key points on which the L&EC had denied the approval.

⁷⁶ <http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf>. p. 11

In relation to biological diversity, I find that the Project would be likely to have significant adverse impacts on biological diversity...in particular on Warkworth Sands Woodland, which impacts would not be mitigated by the Project or by the proposed conditions of approval. I am not persuaded, on the evidence before the Court, that the biodiversity offsets and other compensatory measures proposed by Warkworth are appropriate or feasible or would be likely to compensate for the significant biological diversity impacts. I find, therefore, that the Project will have significant and unacceptable impacts on biological diversity that are not able to be avoided, mitigated or compensated.⁷⁷

The changes made to the offsets policy by the NSW Government, in particular the amendment regarding 'like-for-like' ensured that Rio Tinto no longer had to provide a 'like-for-like' offset for the WSW, allowing the project to circumvent the biodiversity restriction it had previously encountered.

This amendment was especially significant to the BMPA as they had hoped to mount an administrative appeal on the basis that the areas selected to offset the WSW were not the same ecosystem. The new Offsets Policy removed this as a possible avenue of resistance for the BMPA. The legal case the BMPA had hoped to lodge was dropped in May 2016. It had been the final potential legal avenue available to them.⁷⁸

While the concept of environmental offsets may have merit, in application they are frequently used by the proponent as an easy get-out that enables them to appear to address environmental impacts but in reality, often does little to either remedy or compensate for the loss of unique ecosystems (Gibbons and Lindenmayer, 2007).

⁷⁷ *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited* [2013] NSWLEC 48 p. 10

⁷⁸ <http://www.savebulga.org.au/bmpa-to-drop-appeal/>

8.7 Bulga as NIMBYs

In order to promote the MTW mine expansion as a necessary and positive action, Rio Tinto and the DoPE focused on the economic benefits of the mine. Around this focus on economic benefits they also constructed a discourse that painted the community of Bulga as 'Not-In-My-Backyarders' or NIMBYs who were opposing the MTW expansion without thought to those workers who would lose their jobs and the impact on the larger community of workers whose businesses relied on income from Rio Tinto. In nearly every press release or media statement, the NSW Government and Rio Tinto raised the concern about significant job loss and the impact on the greater community of Singleton, a small town located 15km from the MTW mine.

A Department of Planning spokesperson said approving the expansion and continuing mining at the neighbouring Mt Thorley mine would continue employment for 1300 mine workers and generate \$617 million in state royalties.⁷⁹

"We are satisfied that by strictly applying the Department's recommended conditions, the proposals' impacts can be managed," the spokesperson said. "Approving the proposals would mean ongoing employment for the mine's 1300 workers, as well as around \$617 million in royalties for NSW, which would be spent on services such as hospitals, school and roads. Independent analysis has found that the projects would be worth \$1.5 billion to NSW. Given the economic benefits and the fact the impacts can be managed, the Department has recommended that the PAC approve the proposals."⁸⁰

Rio Tinto Coal Australia managing director Chris Salisbury said "We welcome this further confirmation that our proposals meet all of the relevant NSW Government policies and that Mount Thorley Warkworth should be allowed to continue mining, which is vital for its workforce of 1300 people. (*Rio Tinto media release May 2015*)

Mount Thorley Warkworth general manager Mark Rodgers said it was great news for more than 1,000 mine workers. "Our workforce, especially before Christmas, have got some positive news," he said. "They can get on with managing their lives, and focusing on the job and on their safety, and it's a really great outcome."⁸¹

⁷⁹ <http://www.sbs.com.au/news/article/2015/05/18/warkworth-mine-closer-go-ahead>

⁸⁰ <http://www.coalfacemagazine.com.au/tag/nsw-department-of-planning-and-environment/page/6/>

⁸¹ <http://www.abc.net.au/news/2015-11-27/hunter-valley-residents-lose-battle-against-mine-expansion/6980352>

This emphasis on jobs and the benefits to the NSW state economy cast the community of Bulga as NIMBYs intent on causing unemployment and insecurity for vast numbers of MTW workers. Linked to a diminishment of the environmental and social impacts⁸² the community of Bulga was to face, this left Bulga looking like they were making an issue of things when there wasn't one, and as such, they were NIMBYs who for selfish reasons were going to put up to 1300 MTW employees out of work. Rio Tinto and the NSW Government, along with pro- industry lobby groups like the NSW Minerals Council made comments to the media that repeatedly stressed job creation and the impacts on the larger community of Singleton and the Greater Upper Hunter Valley should the MTW mine expansion not be approved. The implication being suggested by these groups appeared to be that the needs of the many should outweigh those of a small community whose actions to prevent the MTW mine expansion would destroy the livelihoods of thousands.

People from different backgrounds, different families, with different opinions and different political views. However, they all have at least two things in common – they are part of their community and they want to work. This is why the workers of Warkworth have stood up and made their voices heard. NSW Greens MLC David Shoebridge was quick to dismiss the hundreds of submissions lodged by workers at the Warkworth mine. Mr Shoebridge suggested that mining employees were being “used” on the company’s behalf to lobby in favour of the project. It’s hard to understand how Mr Shoebridge could suggest that employees have to be coerced into standing up for their own jobs. These are working people, standing up to be heard on an important decision that affects their own jobs.⁸³

And despite the fact that so many jobs are either currently at risk or have already been lost, media coverage of these issues is often portrayed as something straight off the set of Erin Brockovich – a titanic battle of David versus Goliath, of local communities versus the mining projects.

The reality is that people working at these projects are part of their local communities too. There are thousands of Hunter families living in towns such as Singleton, Muswellbrook, Cessnock and Maitland who rely on a strong mining industry for their livelihood. Locals whose kids play in local sports teams. Locals who head to the RSL for a beer. Locals who are members of local clubs such as PCYC, Rotary and Lions.⁸⁴

⁸² <http://www.pac.nsw.gov.au/resources/pac/media/files/pac/projects/2015/08/mount-thorley-continuation-project-second-review/correspondence/6-pac-letter-to-department-23915pdf.pdf>

⁸³ <http://www.nswmining.com.au/menu/media/news/2013/december/opinion-views-of-mineworkers-should-be-respected>

⁸⁴ <http://www.theherald.com.au/story/2209567/opinion-its-no-laughing-matter-for-threatened-miners/>

This narrative was especially evident at the PAC hearings. MTW mine workers, residents from Singleton whose businesses supplied the MTW mine, and other Singleton locals who might otherwise benefit from the MTW mine's continued existence turned up en-mass to deride the Bulga community and their supporters as 'outsiders influencing the outcomes of the PAC'; 'Bulga is only 1.5% of the broader community....Bulga needs to come to the table'; and 'greenie activists who don't know the facts and are ruining the country'⁸⁵. A number of Rio Tinto employees (shown in the meeting in Figure 8.4) presented slide shows depicting their families and detailing the impacts on their lives should the PAC not approve the MTW expansion. One speaker mentioned that he 'can't afford dance lessons for his daughter if the mine closes', another that their 'family had suffered unemployment already so another would force them to leave the community'.⁸⁶

⁸⁵ Obtained from notes of my participant observations from the PAC held 7 September 2015

⁸⁶ Obtained from notes of my participant observations from the PAC held 8 September 2015



Figure 8.4 Picture of MTW mine workers at December 2014 PAC hearing in Singleton⁸⁷

This discourse of NIMBYism worked to isolate the community of Bulga, rendering them outsiders and tied in neatly with the discourse of the MTW mine expansion as a social and economic boon that Rio Tinto and the DoPE were keen to emphasize with their repeated mention of employment and state revenues.

The ‘NIMBY-ing’ of the BMPA and Bulga community was even evident at the L&EC case. In fact, in a personal interview with the Chief Justice, he commented on the efforts made by Rio Tinto to deride the claims made by the community and render the community itself worthless.

I’m not saying I don’t value the person the hi-vis vest but I’m wanting to know why it is that they are more valuable in the mining company and the government’s eyes than the people in Bulga. I don’t understand why is that, you know, they can suffer sleepless nights, full of noise and dust, lose their home, not be able resell their things, don’t know

⁸⁷ Personal photo taken at December 2014 PAC hearing

where they're going to go, they might have had many generations of family there, parents could be buried there, you know whatever it is. Why didn't they matter? But they really do discount it and so we have this discrimination or I think that's an interesting aspect about. You see that with the social planner called by the mining company. You had to probe to get them to accept that there were any people who were affected because when they did it, they made the pool so large that it all just sort of offsets. So it was aggregated. So that people actually didn't matter, it was in aggregate. So what they see was what was provided that they'll be a new school of Singleton or new bridge at Cessnock or New Port of Newcastle and so the people will benefit from that...(Chief Justice L&EC, personal interview May 2015)

The diminishment of the BMPA and Bulga community in this way linked into the broader effort to discredit their claims as NIMBYism. By continuing to promulgate a narrative that depicted the Bulga community and BMPA as NIMBYs, Rio Tinto and the DoPE were attempting to gain moral high-ground and, correspondingly, the right to expand towards the village, whilst also successfully covering up the history of corruption and nepotism within the NSW coal sector. When asked about the expansion and the community of Bulga's opposition, the CEO of Rio Tinto supported the claim that the company had the higher moral ground by re-enforcing the role of the NSW Government as representatives of the wider public.

Asked about the anger in Bulga, Sam Walsh adopts his most placatory tone. "There are a raft of issues there," he says, "and we have to deal with these issues and work through them and we have to rely on the fact that government, representing the people, will take everything into account in terms of how they reach their conclusion."⁸⁸

The NIMBY narrative provided justification for the MTW expansion because it removed any moral stance from the BMPA's claims of environmental and social impact, rendering the claims merely those of self-concern. When contrasted against a narrative describing the implied impacts on the wider community of job-loss and economic ruin, the self-concern of a small village about its well-being paled in comparison. Interestingly, shortly after they

⁸⁸ <http://www.theaustralian.com.au/life/weekend-australian-magazine/sam-walsh-rio-tintos-boss-is-an-iron-fist-in-a-velvet-glove/news-story/ad2528984549eb14d79a82e743de75d4>

achieved their approval for the MTW mine expansion, Rio Tinto - who had worked to brand the BMPA and community of Bulga as self-interested NIMBYs – promptly sold the MTW mine to a Chinese company, Yancoal.

8.8 Conclusion

The BMPA and community of Bulga exploited every formal avenue available to them in the EIA process in their fight to prevent the MTW mine expansion. While these avenues for engagement did eventually provide initial positive outcomes for the BMPA, the manoeuvrings by the NSW Government, the DoPE and Rio Tinto in the end thwarted the BMPA and the community of Bulga's efforts to prevent the expansion. The ability and willingness of the NSW Government to amend the SEPP 2007, remove merits review and change the Offsets Policy to ensure Rio Tinto got the MTW mine expansion approved ensured the dis-empowerment of the community of Bulga. That the EIA process itself could provide so many points of engagement for community, and yet result in so few, if any, gains for Bulga reflects the effects of power resulting from technologies of government employed to disadvantage the public. Despite the appearance of public engagement and suggestion of neutrality within the EIA process, the decision making process remained a technology of the NSW Government, to be employed to its own ends and desires. While the NSW Government worked to appear distant and removed from the decision making process, placing the focus on the DoPE as decision maker, the correspondence⁸⁹ between it and Rio Tinto belies this and reveals instead a government working hand in hand with the proponent. In the face of their concerted effort to work together to approve the MTW mine, the community of Bulga was left without recourse after engaging with all formal avenues within the EIA process. The technologies of government

⁸⁹ Letter of correspondence between Rio Tinto's lawyers and the NSW Government mentioned on page 11

employed by the NSW Government removed any suggestion of impartiality and fairness from the EIA process and their effect was to render the BMPA and the community of Bulga impotent, even as they worked to engage fully with the process.

Branding the BMPA and Bulga community as NIMBYs worked to further disadvantage the community, while bolstering Rio Tinto and the DoPE's claims to commitment to and concern for the wider community. The effect of this discourse was to diminish claims of environmental and social concerns, replacing them instead with a discourse of self-interest that could be used to deride and negate any suggestion of moral imperative by the BMPA and the community of Bulga. Such a discourse also afforded the NSW Government, Rio Tinto and the DoPE an opportunity to suggest a concern for the broader citizen well-being and livelihoods over localised environmental and social impacts that would affect only a few. It allowed them to claim the decision for the 'greater good' versus the selfish NIMBYs. These discourses also successfully concealed the underlying bias towards developers in the EIA process, and the well documented history of corruption and nepotism in the NSW government in dealing with resource projects.

Chapter Nine:

Conclusion

Governments across the globe have chosen to include the EIA process as part of their overall planning systems, not only as a means of assessing impacts, but also as an avenue with which to engage the public in discussion about environmentally significant developments (Cashmore et al., 2008). The inclusion of public comment within the EIA process has been touted as a means to ensure fairness and justice in project approvals, by providing governmental accountability and transparency, as well as a means through which the public can expect to influence decision making outcomes for developments. Yet as shown in Chapter Four, the literature discussing EIA demonstrates that public influence is minimal, as is the effect of the EIA on ensuring favourable environmental impacts (Among many examples, see Abels, 2007, Aitken, 2010, Blakeley, 2010, Head, 2007, Stewart and Sinclair, 2007, O'Faircheallaigh, 2010). In order to understand why this might be so, I looked to explore the ways in which power might be operationalized within the EIA process and what impact this might have on both participation and environmental outcomes. As such, the aims of my thesis were:

1. To gain an understanding of how power is being evidenced, operated and employed within the EIA process by the community, government and proponent; and
2. To explore how the community group engaged with the EIA process and how this relates to their construction and understanding of place, justice and citizenship.

In addressing these, I have argued first, that the shift in citizenship subjectivities provided a viable means of resistance for communities based on a stance of moral and ethical superiority and secondly, that the technologies of government deployed to restrict public influence derived from a bureaucratic culture that had embraced and entrenched regulatory capture by resource companies.

Planning decision making has always been about power/knowledge and subjectivities. As discussed in Chapter Two, the literature has acknowledged the conflict inherent in planning (Richardson, 1996, Richardson, 2005, Cashmore and Axelsson, 2012). An investigation into the role of institutions involved with planning outcomes must therefore engage with these ideas. In Chapter Four, this thesis unpacked the role of the EIA process as a planning instrument. Inherent within the EIA process is the scientific/technology/expert discourse that underpins all facets of decision making. For the public, this means that in order for their input to be accorded influence, they must accept the scientific/technology/expert discourse embedded in the EIA process and provide commentary and relevant expert evidence accordingly (Chapter Five). Failure to do so effectively marginalises their influence in decision making outcomes. To understand this marginalisation, we must examine how the DoPE, PAC and NSW Government are constituted by the scientific/technical/expert discourse.

As discussed in Chapter Four, the EIA process operates as a planning instrument used by the DoPE and NSW Government to provide information on the potential impacts from significant development. The EIA process also provides a recommendation to the DoPE suggesting whether the development should be approved, approved with conditions or disapproved. In order to provide the DoPE with this information, the EIA process employs a positivistic epistemology that fully embraces the superiority of the science/technology/expert discourse. Such an embracing of the science/technology/expert discourse ensures that these types of information and individuals are reified within the EIA process, effectively marginalising those members of the public who are unable to bring to the process similar information or status. Jasanoff (2004) notes that the inability of the public to speak this reified terminology frequently results in the diminishment of public influence in land use decision making. The

exclusion of alternative forms of knowledge, such as cultural or historical knowledge, results in a power imbalance in a decision making process that accepts as valid only one form of information. In this way, power becomes embedded in the EIA process – and consequently, in the institution of the DoPE – in such a way that the opportunity for other knowledge forms to be recognised as equivalent to scientific/technical/expert fails to manifest in any significant manner. Through the reification of scientific and technical knowledge and the expert, the EIA process became an instrument that re-enforced technologies of government that sought to limit and marginalise public influence. Employing governmentality as an optic focuses attention on the ways in which such forms of knowledge are operationalized within the EIA process and within the decision making practices of the DoPE. Understanding how these knowledge forms are operationalized exposes the means by which they become strategies of power. Knowledge is operationalized here to ensure decision making results in a consensus, rooted in neo-liberalism, that promotes economic gain for all; a post-political form of governance that suggests a lack of conflict. However, as this thesis has shown, the EIA process operates as a strategy of government that - in its ability to create restrictions to public influence through resource access limitations, particularly in regard to alternative forms of knowledge - ensures an inherent bias towards both proponent and government who are also the significant beneficiaries of extraction developments. Such biases result in conflict, not consensus.

Additionally, the concept of governmentality enabled me to explore how the NSW Government and DoPE mobilised strategies of power that manifested as legislative changes to restrict the BIPA and community of Bulga's influence. The actions taken by the NSW Government, DoPE and Rio Tinto illuminated the networks of power operating outside of the

public purview and influence. These networks effectively operated as technologies of government, controlling the public through the means of restriction and marginalisation. Background manoeuvrings of this type dispute yet again the idea of a post-political governance occurring in planning decision making, for how can those with no or negligible influence come to a consensus when they are also excluded from the decision making process itself.

I utilised the concepts of governmentality and citizenship together to better understand the strategies deployed to shape the conduct of those individuals and communities engaging with the EIA process. These attempts at engagement were made outside of formal avenues to elicit influence on decision making outcomes for significant developments, given that the formal avenues for engagement in the EIA process had not yielded any positive outcomes. As the literature exploring community engagement with EIA processes has repeatedly shown, if the process itself marginalises the community, then the only recourse is for the community to operate outside of the formal avenues, engaging with other entities that can provide support across scales from which to operationalise power to resist (See among others O'Faircheallaigh, 2015, O'Faircheallaigh, 1999, Agrawal and Gibson, 1999, Aitken et al., 2008, Connor et al., 2009, Devlin and Yap, 2008, Richardson, 2005). As discussed throughout this thesis, the community of Bulga engaged in just this type of behaviour. The uniting of governmentality and citizenship enabled me to unpack the community of Bulga's reimagining of themselves as citizen subjects, highlighting the ways in which the community was able to engage with this new subjectivity as a means of resistance. This was significant as Foucault's conceptualisation of one of the main effects of power as the constituting of self insists that power is therefore not operating negatively on pre-constituted subjects. Instead it becomes predicated on power

being conceptualised as freedom. Individuals are then the creation of their own subjectivities which arise from particular desires, discourses and identities. It is this perspective that helps illuminate the re-constitution of citizenship by the BMPA and the community of Bulga. Such a re-constituting of citizenship at the community level worked to upend the technologies of government deployed by the NSW Government and DoPE. By creating this new community citizenship subjectivity, the BMPA and community of Bulga constructed a space within which they were able to ground themselves and work to resist the machinations of the NSW Government and DoPE. For the BMPA and community of Bulga, a re-imagined citizenship subjectivity became a strategy of power.

This thesis, then, has documented the shift in citizenship subjectivities that arose due to the lack of influence accorded the public in the EIA process in NSW (Chapter Six). Further, it has shown that this shift in citizenship subjectivities has occurred as a result of technologies of government deployed to impede the public's ability to influence decision making outcomes (Chapter Eight). Significantly, my use of governmentality as a lens through which to explore relations and strategies of power within the EIA process has led to an understanding of how technologies of government may also be co-opted by those individuals or groups resisting the 'conduct of the conduct' and refashioned toward their own ends. Combining the lenses of governmentality and citizenship exposed the way in which the BMPA and community of Bulga had re-envisioned citizenship. The BMPA (Chapter Six) resisted the NSW Government's attempts to negate their influence on decision making outcomes for the EIA process through a strategy of re-imagined citizenship that led to claims of moral and ethical superiority.

By remaking themselves as community citizen subjects, the residents of Bulga resisted the DoPE's approval of the MTW mine expansion through an inherent claim to both sovereignty and moral right. Re-imagining citizenship identity in this manner enable it to perform as a counter technology of community governance, facilitating a connection between Bulga and other communities fighting extractive projects supported by governments. Such claims sprung from the labelling of the NSW Government as corrupt based upon the technologies of government deployed by the government against its own citizens. Working within this space, the BMPA engaged with the media (Chapter Seven) to exploit avenues that led to a higher public profile, ensuring that their plight and message remained in public consciousness. These steps enabled the BMPA to launch a counter discourse to the NSW Government and DoPE's economic benefits claim which leveraged the accusations of corruption and collusion the BMPA drew upon to reframe the notion of citizenship. The reframing of citizen as community gave strength to the community of Bulga's battle to stop the MTW mine expansion by enabling them to engage with a broader audience which could be drawn upon for support. Further, the idea of a wider community self-identity engaged with another set of politics which could be considered either socially progressive or exclusionary. The community of Bulga, in working with other communities to create a broader community identity, engaged in social progressive politics designed to unite these communities in defence against the NSW Government and extractive industries. A uniting of communities infers the possibility of a group strategy of resistance that could work to force the government into taking steps to address widespread community concerns.

By engaging with this idea, the community of Bulga was also able to use these broader networks of association to draw together individuals with very disparate belief systems in

support of their fight to stop the MTW mine expansion. For example, they had the support of both the local Greens political party and Alan Jones, a right-wing radio shock jock (Chapter Six and Seven). Such diverse supporters lend weight to the idea that mobilising novel citizen identities in this manner can be considered a new political phenomenon that could unfold in unpredictable ways, possibly even ensuring a 'win' for the community.

In Chapter Eight, I showed how the NSW Government and DoPE worked together with Rio Tinto behind closed doors to ensure the approval of the MTW mine expansion. Such actions were supported by a bureaucracy that promoted a discourse that the extraction industry was a pivotal provider of both jobs and revenue for the state of NSW. As such, this particular economic discourse worked within the bureaucracy of NSW as a strategy through which to foster a belief in the superiority of the extraction industry claims over that of communities, which were assumed to be without economic merit. Buying into this discourse, the DoPE was rendered an easy target for regulatory capture. As noted in Chapter Four, the political nature of land use decision making, and the EIA process itself, can result in a democratic deficit in governance over developments. The BMPA and community of Bulga clearly showed that, when the government is in favour of a development for political or economic reasons, or both, it can and will take actions that serve to undermine its own democratic processes. If this can occur, then this thesis has exposed the EIA process as a weak, tokenistic decision making instrument that enables: a bias in decision making criteria towards short term economic gains; a lack of a level playing field in access to legal representation, expert advice and governmental agencies; regulatory capture and ultimately, a failure of the rule of law and denial of natural justice through denial and negating of appeal rights.

The contributions of this thesis then, are the uniting of governmentality and citizenship as a lens through which to illuminate the ways in which power is strategized and operationalized in conflicts arising from land use decision making processes. Exposing the actions taken by government, proponent and community to the optics of governmentality and citizenship has revealed the ways in which the EIA process functioned as a technology of government that operationalized power in strategies geared to inhibiting public influence while simultaneously advantaging the proponent. The actions and outcomes mentioned highlight the inherent bias within the EIA process as it currently operates and support suggestions of injustice and exclusion within planning decision making in general. My thesis therefore refutes the idea of a post-political governance suggestive of an inherent consensus within the field of planning. While this thesis discusses a single case study, the application of these lenses are more broadly applicable in other fields and to other kinds of land-based disputes as a means of understanding the inherent strategies and relations of power existing in each.

Additionally, my research offers a unique perspective on the way in which a community can work to re-imagine citizenship at a community level and then use this re-imagining to acquire support from a broader audience, operationalising power in the process. In grounding their resistance on a re-scaled citizenship that specifically linked the community of Bulga and the BMPA to a superior morality and ethics, the BMPA were able re-invent themselves as advocates for all communities and work towards uniting wider communities which could then be mobilised in protest and resistance against the NSW Government and DoPE. In light of the findings presented in the thesis concerning regulatory capture, this form of re-imagining citizenship may be the only way for communities to leverage any form of power within

processes such as EIA process and broader land and infrastructure development policy mechanisms.

Ultimately, the community of Bulga and the BMPA's experience with the EIA process in NSW highlights the inequalities existing within planning decision making, particularly for large development projects. Such inherent inequalities forced the community of Bulga to take dramatic steps to even be recognised in the context of the EIA process. As this thesis has shown, communities can confront environment injustices by launching themselves into activism, making enough noise through the use of social and traditional media that they force the government to, at the very least, provide an acknowledgement of their concerns. Whilst this may provide only minimal returns for the community, such actions do push the notion of environmental justice into a broader public consciousness. This expansion into a broader public consciousness creates the possibility of a uniting with other similarly affected communities, which could then prove to be a greater strategy of power for communities, enhancing their voice in decision making for large developments. Additionally, the BMPA's actions in the L&EC, along with their public campaigns and protests against the MTW mine expansion, bought them many years of extra time, raising the costs of keeping the mine for Rio Tinto, a victory of sorts for the community of Bulga. Further, the BMPA - through their constant attempts to keep the community of Bulga's fight to stop the MTW mine expansion in the news - may have caused additional reputational damage for Rio Tinto and put off some potential buyers Rio Tinto was recruiting to buy the MTW mine. While these actions may not have resulted in a final positive outcome for the community of Bulga, they may have provided inspiration for other communities potentially affected by similar development, demonstrating in strategies of resistance that they too could use to fight unwanted developments. The

BMPA's actions, both in court and through their use of media, may also have raised red flags for other extractive companies operating in rural Australia, perhaps tempering their own interactions with other communities to avoid similar outcomes.

This thesis then contributes to an understanding of the deeper power dynamics at play in land use decision making for major developments and illuminates the roles played by the government, proponent and planning bodies in ensuring public influence is restricted. My research reveals the manner in which governments and planning bodies can be captured by proponents and exposes how such actions function as strategies of power designed to ensure communities are marginalised at best, un-recognised at worst. Confronting the ease and frequency with which regulatory capture occurs in extractive developments requires exposing the power dynamics that work to enable such capture – my thesis does so, illuminating the strategies of power deployed in this case by the NSW Government, DoPE and Rio Tinto. Strategies of exclusion, restriction and 'othering' were exposed as tactics of power designed to ensure approval for the MTW mine expansion (Chapter Eight). Highlighting how these tactics of power were deployed in this case reveals the how regulatory capture works in practice where an inherent power imbalance is coordinated through a relationship between government and proponent driven largely by the promise of potential state revenue and personal gain.

Regulatory capture and the nature of EIA processes functioning as a technology of government have been under-acknowledged in the EIA literature. My thesis has begun to address this gap, by using the lens of governmentality to illuminate operations of power that restrict and exclude communities in land use decision making processes. The thesis has additionally shown

the strategies that communities themselves use in the face of this power imbalance and the kinds of dynamics that can then unfold. My contribution, therefore, is to knit together government, proponent and community as participants in order to illuminate the power dynamics present within the EIA process, providing new understandings of the relationships between government, proponent and community.

Finally, while the BMPA and community of Bulga were unable to stop the MTW mine expansion because of the regulatory capture within the NSW Government and DoPE, their own loss has provided other communities with the tools to fight back, perhaps with more success, in the on-going battle against extractive developments in NSW and globally. The push for environmental justice for communities is a continuing concern and, regardless of their own outcome, the BMPA and community of Bulga have re-written the rules for community resistance, offering a means of empowerment to other communities similarly affected by major developments. Such an accomplishment deserves recognition and praise; go you Bulgas indeed!

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Appendices