

By email pac@pac.nsw.gov.au
NSW Planning Assessment Commission
Attn: Mr Matthew Todd-Jones

17 November 2017

Dear Ms Lynelle Briggs, Chair,

Supplementary submission re Rocky Hill Coal Project

1. I refer to our oral presentation to the Planning Assessment Commission at Gloucester (14 November 2017) which was focussed on the Purvis' turtle – also known as the Manning River Helmeted Turtle – *Myuchelys Purvisi* and the failure of the Applicant to assess the risks to this turtle in accordance with the [Threatened Species Assessment Guidelines](#).

2. The Guidelines were made under the *Threatened Species Conservation Act 1995* which is an Act which was repealed in August this year. One purpose of this supplementary submission is to affirm that we are aware of the repeal of that Act and the introduction of the new *Biodiversity Conservation Act 2016* and that the Threatened Species Assessment Guidelines continue under the [Biodiversity Conservation \(Savings and Transitional\) Regulation 2017](#) for environmental impact assessments commenced prior to 25 August 2017.

3. In effect, both the Applicant and the Department assessing the application for the development should have been cognisant of the need to comply with those guidelines from 30 September 2016 when the NSW Scientific Committee made a Preliminary Determination that the turtle was endangered through to August this year – a period which includes 28 April when the Final Determination was made of the turtle as endangered – and then since August 2017 under the transitional arrangements.

4. Of particular relevance here is the retrospectivity of the Guidelines in as much as it says that a determination made after an applicant has completed an environmental impact statement [EIS] requires the applicant to go back and cover the endangered species in question (see paragraph 8 at page 3 of the Guidelines).

5. Given the paltry coverage of Purvis turtle in the [Department's report](#) at page 83 (which has simply described the company's latest response about the turtle and concluded that the turtle won't be affected because it is allegedly not found at the proposed mining site) it appears that the Department does not appreciate the requirement of the Guidelines that the applicant must

- “Not only have an understanding of the species' life cycle, but also an understanding of the way in which a species makes use of its habitat, the way this may change at particular times or in certain seasonal conditions and whether the life cycle is dependent on a particular disturbance.”
- Assume that any known or presumed local population is viable unless the contrary can be conclusively demonstrated through analysis of local ecological information,

records, references and knowledge of species' behavior and habitat through a comprehensive on-site ecological study.

(The response, by the applicant's EIS, to the concerns raised regarding the impact of the project on the turtle can only be described as superficial. There is no evidence of any comprehensive on-site ecological study having been conducted which could support their claim that the turtle "is unlikely" to occur in the creeks and rivers which will be impacted by the Project.)

6. In conclusion our Group recommends that

- if the Planning Assessment Commission supports the Department's refusal of the development application for the reasons given by the Department, there should also be the additional reason that the applicant has failed to comply with the Threatened Species Assessment Guidelines regarding the scientifically determined endangered Purvis' Turtle. (our preferred outcome)
- should the Commission be minded to allow the development application subject to a raft of conditions, those conditions should include meeting the requirements of the Threatened Species Assessment Guidelines in accordance with best practice environmental assessment standards. This should entail a comprehensive study of the turtle's life cycle and the factors affecting it over a number of years.

Yours sincerely

Nawal Maharaj
President

