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The Executive Director - Resources & Industry Policy
NSW Department of Planning & Environment
GPO Box 39
Sydney NSW 2001

Dear Sir/Madam

NSW Integrated Mining Policy

We thank you for the opportunity to provide feedback on the NSW Government Integrated Mining Policy (**IMP**) released for public comment on 28 May 2015. This letter forms part of Peabody's submission on the following aspects of the IMP that are on public exhibition until 9 July 2015:

1. Standard Secretary's Environmental Assessment Requirements (**SEARs**);
2. Biodiversity Offsets for Upland Swamps (**Upland Swamp Offset Policy**); and
3. Mine Application Guideline (**MAG**).

Who is Peabody Energy Australia?

Peabody Energy Australia is a subsidiary of Peabody Energy (NYSE: BTU), the world's largest private-sector coal company. Peabody Energy has been active since 1883 and currently has majority interests in 26 coal operations located across the United States and Australia.

Peabody Energy Australia (Peabody) operates mines throughout New South Wales (NSW) and Queensland and has four mining operations at three sites in NSW, located in the Hunter Valley, the Western Coalfields and the Southern Coalfields.

Peabody employs a workforce of 1,200 people (including contractors) at its NSW sites. In 2014, the company produced more than 21.2 million tonnes of coal in NSW and delivered royalty payments of more than $91.5 million to the NSW Government. Peabody operations are a significant contributor to the social and economic life of regional NSW, and the company has a strong track record in terms of community participation, safety and responsible local environmental management. As a holder of current approvals granted under the State Significant Development provisions of Part 4 and the now repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) and a proponent of a new SSD project for the proposed expansion of Wilpinjong Coal Pty Ltd, Peabody has a significant interest in the form and content of any proposed reforms to planning and mining regulation in NSW.

Peabody's submissions on the IMP

Peabody considers the introduction of the IMP as a positive step in the improvement and streamlining of the overall regulation of State significant mining projects in NSW. As a complete package, the IMP should provide greater certainty for proponents, the community and regulators with regard to the project application and performance requirements for mining projects.

This submission focuses on the key aspects of the individual policies that Peabody believes require revision or clarification, including:

- Clarity on definitions and operational requirements in aspects of the IMP to prevent unintended interpretation issues.
- Inappropriate / inconsistent detail or scale of information being requested at the EIS phase of a project.
- Duplication of information between approvals.
- Potential for Policies to result in significant financial imposts on mining operations without regard to actual environmental consequence.

Each of these aspects in addition to other procedural matters is discussed in detail below in reference to the relevant policy.

1 Standard Secretary's Environmental Assessment Requirements (SEAR's)

Peabody submits the following concerns and recommendations in regards to identified issues to the SEARs as currently drafted. In addition to the matters discussed below, **Appendix 1** provides specific concerns with the Standard SEARS.

1.1 SEAR Amendments

Due to the complex and varied nature of State Significant Development (SSD) projects, Peabody supports the Secretaries capacity to deviate from the Standard SEAR's to ensure the EIS is appropriately targeted accounting for any special or non-specific environmental risk. This will enable more appropriate Government assessment of the identified project.

SEAR detail should be left for regulatory input into the tailoring of SEARs, so that any SEAR detail is site specific. (i.e. moving to standard SEARs should aim to avoid the development of bigger EIS's that are not targeted to project-specific assessment issues).

Peabody therefore endorses that through the IMP consultation process that the Secretary's capacity to amend the SEARs as described in the current draft is retained.

1.2 Unrealistic project design/information expectations:

SSD Mining Projects are highly complex, mobile in nature, long life, capital intensive and required to adapt to cyclical market conditions. Content requirements for EISs for these projects also need to reflect an inherent need for future flexibility. The draft Standard SEARs have a tendency to require increasing front-ending content that is currently developed post-approval.

Peabody submits that there appears is too much focus on addressing Mining Lease (ML) and Environmental Pollution Licence (EPL) related information requirements in the SEARs.

The requirement to provide management plan or Mining Operations Plan level information in the EIS process will result in expanding the EIS's beyond its current large size and scope. This will have the result of putting at risk, large tracts of potentially redundant EIS content as a result of the project changing through the assessment process and over the project life.

These requirements will result in increased duplication of information, cost and time during the EIS preparation and design phase. It will also provide additional assessment and approval complexity for Government.

Peabody recommends that DP&E should retain the current practice and limit, where possible the requirement for ML and EPL related information to a post approval process once certainty can be provided on the final form of the project.

1.3 Environmental Impact Assessment (EIS) requirement inconsistencies:

The level of detail/prescription between various SEARs is at odds with achieving a refined internally consistent policy document. The current draft reflects various regulatory agencies input to the policy document at an inconsistent level of prescription.

Peabody is concerned that requirements for some issues has potential to elevate matters beyond their relevance and are not necessarily related to the risk potential of the proposed project. The following table provides an example of the inconsistencies:

<table>
<tr><th>Noise & Vibration</th><th>Air Quality</th><th>Waste</th></tr>
<tr><td colspan="2">Typically key issues for Major SSD mining projects</td><td>Typically not a critical issue for Major SSD mining projects</td></tr>
<tr><td>SEAR Requirements
0.5 pages</td><td>SEAR Requirements
3 pages</td><td>SEAR Requirements
1.5 pages</td></tr>
<tr><td rowspan="2">Generally consistent with the current SEARs being issued by DP&E.</td><td colspan="2">Inconsistent with the current SEARs being issued by DP&E and reads more like current detailed regulatory input to the SEARs (that proponents currently need to have regard to).</td></tr>
<tr><td><u>Comment:</u>

Unnecessarily prescriptive

Requires inclusion of an Air Quality Management Plan in the assessment.</td><td><u>Comment:</u>

Unnecessarily prescriptive and/or unclear.</td></tr>
</table>

1.4 Mapping requirements

The Standard SEARs state that all relevant plans should be provided in an electronic format that enables integration with mapping and other technical software.

Peabody considers that it is inappropriate to provide this commercially sensitive information to a Government Department unless appropriate restrictions as to its disclosure and use are entered into. Once this information is provided to the Department, it can potentially be accessed by the public under the *Government Information (Public Access) Act 2009*.

1.5 Industry best practice

The standard SEARs require assessment of whether proposed mitigation measures are consistent with 'industry best practice' and represent the full range of reasonable and feasible mitigation measures that could be implemented.

There is no prescribed source of information available to proponents as to what constitutes 'industry best practice' which therefore makes it difficult for proponents to determine what mitigation measures the Department will accept as appropriate.

Peabody recommends that the Department should provide an annual publication to mining proponents regarding what constitutes 'industry best practice' in relation to key areas such as noise, air quality, blasting practices etc.

1.6 Identification of market segments for sale of product coal

The standard SEARs require a proponent to identify the market segments for the sale of product coal.

Although some limited information regarding proposed market segments can be provided in an EIS, it is difficult for proponents to predict for the life of the project where their product will be sold to as this is driven by the global market.

Furthermore, this sort of information should not be relevant to the determination of whether a project is granted development consent or not (but for transportation issues associated with providing product coal to customers), and hence it should not be necessary for inclusion in the EIS.

1.7 Other approval requirements - demonstrate compliance with the Commonwealth *Native Title Act 1993 (Cth)* (NTA) and the right to negotiate process

The standard SEARs require the proponent to demonstrate compliance with the Commonwealth NTA and the right to negotiate process. However, at the stage of lodging an EIS it is highly unlikely that a proponent will have commenced, let alone completed any right to negotiate process.

It is recommenced that, at most, the proponent be required to demonstrate how it will comply with the NTA prior to being granted a mining lease.

The Division of Resources and Energy's new protocol for native title extinguishment reports (Protocol and checklist for proof of extinguishment of native title) should be referred in the SEARs as the relevant guideline.

1.8 Assessment of cumulative impacts

Various sections of the standard SEARs require the proponent to assess the cumulative impacts of the project. Further clarification is required regarding what other development needs to be considered in the assessment of cumulative impacts.

Peabody submits that the assessment should be limited to approved developments and those that have lodged a development application and EIS.

1.9 Maximise opportunities for progressive rehabilitation

The standard SEARs require that the mine plan to maximise opportunities for progressive rehabilitation of the mine.

Peabody appreciates the need to achieve progressive rehabilitation as soon as possible in a mine's life, and is committed to achieving rehabilitation areas specified in the Mining Operations Plans (MOP's).

Given the complex nature of mining operations (especially open cut mining) and the long life of mine that is often sought i.e. greater than 20 years, variation to the rehabilitation progress as specified in EIS documents is sometimes unavoidable. Therefore changes to the timing of rehabilitation progress should be dealt with through the MOP process.

1.10 Biodiversity

The exemption from the requirement to consider the framework for biodiversity assessment and the need to prepare a comprehensive biodiversity offset strategy in circumstances where there is a strategic regional assessment already in place should be more clearly worded.

1.11 Heritage

The standard SEARs require that where Aboriginal cultural heritage values are identified, consultation should be undertaken in accordance with the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (OEH).*

Peabody submits that the SEARs should also provide other options for appropriate consultation process, such as those identified in clause 80C(10) of the *National Parks and Wildlife Regulation 2009.*

2 Biodiversity Offsets for Upland Swamps

Metropolitan Coal (Metropolitan) is a subsidiary company of Peabody, operating in the Southern Coal fields of NSW. The current draft policy has a number of key aspects that either technically incorrect or through the interpretation of the Policy could detrimentally impact Metropolitan. Peabody's concerns are detailed below noting that Metropolitan will provide additional operational concerns within its own submission.

2.1 'Nil' and 'negligible'

There appears to be inconsistent use of the words "Nil" and "Negligible" that if applied as written in the current draft would result in significant financial impost to Metropolitan Coal without having proper regard to the actual environmental consequence. Examples of these issues are:

- The Upland Swamp Offset Policy provides that no up-front offsets will be required where a project will have 'nil' or 'negligible' environmental consequences on upland swamps (i.e. not result in change).
    - There is a difference between '*nil*' change in the upland swamps and 'negligible' change. The reference to '*not result in change*' in paragraph 4 of the introduction should be changed to '*means subsidence that will have a negligible impact to…*'. This also makes it consistent with paragraph 7 of the introduction that states '*if it is predicted that upland swamps are likely to experience greater than negligible environmental consequences, than an offset will be required as a condition of consent*"
- The definition of 'negligible' environmental consequences should differ between upland swamps and threatened species. A greater than negligible environmental consequence for upland swamps will not necessarily equate to a greater than negligible environmental consequence on threatened species.
- The definition of 'negligible' environmental consequences should refer to 'swamp substrate groundwater regimes' rather than 'shallow groundwater regimes'.
    - Changes to the 'shallow groundwater' system (e.g. at 4 m depth below a swamp) do not cause changes to groundwater regimes supporting an upland swamp, where there is not also a change to the 'swamp substrate groundwater regime' (e.g. a 1 m bore in the swamp substrate).

2.2 Retrospectivity

It should be made clear in the policy that the definition of 'negligible' environmental consequence for upland swamps only applies to Projects approved **after** the adoption of the Upland Swamp policy.

- For example, upland swamps were not listed as an Endangered Ecological Community at the time of the Metropolitan Coal Project Approval.

Peabody recommends that the Policy should ensure that the definition of 'negligible' environmental consequence for upland swamps cannot be retrospective.

- Any Project Modification should not retrospectively apply the policy to previously approved impacts (under different approval requirements). The framework therefore should not apply to all new Extraction Plans approved following 31 October 2015.

2.3 Maximum predicted offset liability

The Upland Swamp Offset Policy indicates that the offset liability should be calculated on the potential maximum impact given uncertainty in the prediction of subsidence and consequent environmental outcomes. However the Policy does not describe how to identify a "potential maximum" or "worst case" scenario.

Peabody submits that there is relatively high degree of certainty with regard to subsidence impacts and on this basis it is unreasonable to require proponents to obtain offsets based on the worst case scenario. The Upland Swamp Offset Policy should be revised to only require proponents to obtain offsets based on the actual predicted impacts and, in circumstances where these impacts are exceeded additional offsets should be obtained (as is the process where 'negligible' impacts are predicted).

2.4 Securing an appropriate offset for predicted impacts

The Upland Swamp Offset Policy requires the proponent to demonstrate how it will legally secure the proposed offsets such as ownership of the land or a long-term option to purchase, or provision of an adequate security bond or deposit. These security mechanisms are likely to be costly to the proponent. On this basis, it is unreasonable to require the proponent to implement such measures until such time that the development has been approved. As has traditionally been the case for mining projects, it should be a condition of a development consent that the proponent obtains offsets within a specified period of time after development consent is granted.

3 Mine Application Guideline

The MAG as currently drafted provides areas of overlap between the current draft Standard SEARS and for certain matters suggests inappropriate high level of details that does not provide for an internally consistent document.

Key issues identified in the MAG are:

3.1 Identification of process for preferred project designs

The MAG requires a preferred mine design to address the full lifecycle of the mine and consider alternatives to avoid or minimise negative impacts. Key areas of focus include the mine design, especially in terms of its rehabilitation potential and options for post-mining use.

This level of information and detail has always been provided in the mining operations plan (**MOP**) that is prepared after development consent has been granted for a project. By requiring proponents to provide this level of information in the EIS, will in turn restrict operations to be carried out 'generally in accordance with' such plans. As a result, if the proponent deviates from these mine designs it is likely to require numerous project modifications.

These requirements will result in increased cost and time during the EIS preparation and design phase. It will also result in additional assessment and approval complexity for Government, which is contrary to Government's commitment to reduce approval timeframes.

Peabody recommends that DP&E should limit, the requirement for ML and EPL related information to a post approval process (as currently required) once certainty can be provided on the final form of the project.

3.2 Interaction of the proposed mine with surrounding land uses

The MAG emphasises the requirement for appropriate separation distances between mining operations and existing land uses, and encourages early consideration of land acquisitions.

Peabody agrees that to a certain extent it is necessary to maintain some degree of separation between mining operations and other land uses. That being said, the location of the minable resources cannot be changed and hence, in order to achieve the other objective of the MAG being 'effective resource recovery', there will be certain cases where a separation from existing land uses is not possible. Peabody acknowledges that in such cases the Voluntary Land Acquisition and Mitigation Policy will apply.

3.3 Sharing infrastructure with nearby operations

The MAG requires a proponent to give consideration to '*sharing infrastructure with nearby operations where appropriate commercial agreements can be reached*'.

Peabody acknowledges that in certain circumstances it is feasible to reach commercial agreements with nearby operators to share infrastructure. However, in other circumstances this is completely unrealistic due to the structure of existing operations. On this basis, Peabody submits that it is inappropriate to include as a condition of consent a requirement to enter into infrastructure sharing arrangements where commercial agreement can be reached. Such an outcome would occur anyway, irrespective of the inclusion of a condition. Similarly, it would not be possible for the Department to enforce such a condition and assess compliance against the condition and as such it should not be included in the first place.

Peabody supports Government in the development of the IMP to provide clear policy direction on important mining issues and continue to reduce duplication between key mining approvals. However the policies as currently drafted, still have issues resulting in:

- Clarity on definitions and operational requirements in aspects of the IMP to prevent unintended interpretation issues.
- Inappropriate / inconsistent detail or scale of information being requested at the EIS phase of a project.
- Duplication of information between approvals.
- Potential for Policies to result in significant financial imposts on mining operations without regard to actual environmental consequence.

Peabody Energy Australia looks forward to further consultation with NSW Government regarding the IMP.

If you would like to discuss any aspect of this submission in more detail, please contact Mr Jamie Lees (Director Sustainable Development) on mob 0428619577 or jlees@peabodyenergy.com

Yours faithfully

Julian Thornton
Group Executive Operational Support
Peabody Energy Australia

APPENDIX 1 – Examples of Specific Concerns with the Draft Standard SEARS

Subject Area	Example Current Standard SEAR Requirement	Peabody Comment
Land and soils	*The EIS must:* *Characterise soils across the disturbance footprint, including a soil assessment undertaken in accordance with the NSW Government's BSAL verification protocol.*	BSAL verification should not form a component of an EIS. BSAL verification will have been completed through a Gateway Certificate or Site Verification Certificate prior to lodgement of the EIS for relevant new mining areas. Therefore, BSAL verification should be removed from the EIS requirements and the SEARs only refer to soil characterisation in general terms.
	The EIS must: ... *Include an AIS;*	An Agricultural Impact Statement (AIS) should only be required if a Gateway Certificate has **not** been obtained (or if the Site Verification Certificate process has not provided sufficient confidence that no Agricultural Impact Statement is required). Note the Standard SEARs does not refer to any guideline for the preparation of an Agricultural Impact Statement.
Water	... *Demonstrate that all practical options to avoid discharge have been implemented and outline any measures taken to reduce the pollutant load, where a discharge is necessary. Where a discharge is proposed, analyse expected discharges in terms of:* ... – *salt balance, to be compliant with the requirements of any relevant Salinity Trading Scheme or the objective of "no new salt" being introduced into surface water systems;* ...	This "no new salt" SEAR appears to be new Government policy/objective concepts finding its way into the Standard SEARs without broader industry consultation. Additionally this type of draft Standard SEAR content may be only of relevance to particular regions, or may have evolved from recent regulatory experience on a particular project. It is recommended that these style of SEARs not be broadly applied to all SSD projects, but should be applied on a project-specific assessment issue basis.

Subject Area	Example Current Standard SEAR Requirement	Peabody Comment
Air Quality	... *Provide a detailed discussion of all relevant proposed emission control measures in the form of a project Air Quality Management Plan.* *The plan must including details of a proactive and reactive management system. The information provided must include measurable and auditable measures:* - *link proposed emission controls to the site specific best practice determination assessment;* - *timeframes for implementation of all identified emission controls;* - *key performance indicators for emission controls;* - *monitoring methods (location, frequency, duration);* - *response mechanisms;* - *responsibilities for demonstrating and reporting achievement of KPIs;* - *record keeping and complaints response register; and* - *compliance reporting.* ...	This is an example of detailed requirements being included in the SEARs that are not relevant to the assessment phase of the EIS. Peabody submits that all management plans should be prepared post approval once the parameters of the development are clearly determined and the surrounding receptors are determined (i.e. after the implementation of the Voluntary Land Acquisition and Mitigation Policy).