

31 March 2016

Mr David Kitto
Executive Director
Resource Assessments & Business Systems
Department of Planning and Environment



Dear David Kitto

Revised Community Consultative Committee Guidelines for State Significant Projects

Thank you for the opportunity to provide feedback on the revised Community Consultative Committee Guidelines – State Significant Projects (the revised Guidelines). This submission is provided to the Department of Planning and Environment (the Department) on behalf of the Dargues Gold Mine Community Consultative Committee (DCCC).

Comments on the revised guidelines from DCCC members and the DCCC Chair are provided below. DCCC members were also advised they are welcome to provide individual submissions outside of this submission. Submissions from individual community representatives are attached, and have been received from:

- » David Lever
- » Peter Cormick
- » Belinda Royds
- » Jackie French
- » Tom Wells

Community representatives

The following provides extracts from the community representatives' submissions. DCCC community members are generally supportive of the revised guidelines. General comments and suggestions raised by community representatives (reported unedited) include:

- » Allow CCCs to perform flexibly within the revised guidelines to determine certain matters, such as preparing the minutes and the arrangement of alternate members
- » Membership composition should be defined generally to allow for flexibility between CCCs. The guidelines should provide minimum requirements for company, community, and council representation and ensure that community representatives are taken from a true cross section of the community
- » A definition of 'key stakeholders' should be provided
- » The Company's role in the appointment and recommendation of the Independent Chairperson is inappropriate
- » The materials provided in the Toolkit are excellent
- » The revised guidelines should require all members (as well as the Independent Chairperson) to conduct themselves respectfully at all times and appropriate action should be taken for any misconduct.



Community representatives also provided specific comments on the revised guidelines, noting that the revised guidelines should:

Purpose of the Committee

- » Acknowledge the role of the CCC in representing community views to the Company and for the Company to transmit information to the community
- » Consider application of the statement, "provide advice to the Company ... to minimise any impacts". This provision really cannot be taken advantage of unless the committee is provided with independent, expert advice - unless of course such expertise exists within the committee.

Independent Chairperson

- » Require the Independent Chairperson to have no business or personal connection to the Company (or any representative of) and to declare any connection throughout their appointment.

Community representatives

- » Amend "current residents of the area" to read, "current residents of the areas affected or potentially to be affected by the project"
- » Explain the level of recognition required for a "recognised environmental organisation"
- » Prevent the Company's role in the selection of CCC members.

Timing and location of meetings

- » Allow for meeting times to be chosen by a consensus of community representatives

Meeting proceedings

- » Require responses to questions to be provided within a reasonable timeframe, where there is insufficient time for the matter to be raised during the meeting
- » Require the Independent Chairperson to allow motions from all CCC members, with only community representatives permitted to vote on them.

Minutes of meetings

- » Require minutes to be published when they are finalised only
- » Amend the statement concerning recording of meetings to read, "Recording of meetings - by recording device, telephone or any other electronic device - is only permitted with the prior agreement of all committee members and non-committee members present" to ensure no member (or non-member) is recorded against their wishes. Recording should be undertaken by the Independent Chairperson only as independent verification
- » Require that the minutes for each meeting are posted on the Department's website
- » Require the Company to make the minutes available on their website within a reasonable timeframe.

Conduct of Committee members

- » Amend "Committee members and alternates are expected to regularly attend meetings" to read, "Committee members are expected to regularly attend meetings" and "alternates are expected to regularly attend meetings, when requested"
- » Provide a definition of 'regularly'. A suggested definition is "at least one of the previous four meetings and at least three of the previous eight meetings"
- » Expand the requirement for CCC members to "engage with other members of the Committee respectfully" by adding the words, "refraining from unconstructive, threatening, intimidating



and disorderly behaviour, or any form of conduct which may cause any reasonable person offence or embarrassment"

- » Ensure that a member who is or has been unsupportive of the project cannot be dismissed as a result of this lack of support.

Attendance by non-Committee members

- » Allow for a member of the Department to be routinely invited CCC meetings by the Chair when a Project Modification is either on exhibition or under assessment by the Department
- » Allow for CCC members to invite legal and technical experts, at the discretion of the Independent Chairperson, where due notice is given to all members.

Dispute resolution

- » Appoint an independent adjudicator, who CCC members can appeal to if the Chair fails to deal with improper conduct, or the Company fails to respond adequately to questions. The independent adjudicator may also investigate complaints from the CCC regarding actions of the Company.

Responsibilities of the Company

- » Expand the commitment for company to "consult with the committee prior to seeking approval for a modification to its conditions of consent", ought to be expanded and state that the results of the consultations are to be included in the application for a modification
- » Provide penalties where the Company fails to disclose information within a reasonable timeframe, including questions tabled at the CCC meetings, or attempts to mislead the CCC.

Communication with the broader community

- » Delete the words "all documents and other" from the statement, "there is a presumption that all documents and other information considered by the Committee should be generally available to the community". To encourage open communication from the Company where documents can be restricted to the Committee and provide the potential for undue pressure from the community on the assessment by government agencies of draft audit report, annual reviews, and so on.
- » Allow for all discussions at CCC meetings to be publically available, unless confidentiality has been raised in writing.

Company members

Unity Mining elected to provide the Department with an individual submission outside of this CCC submission.

Comments by the Independent Chair

Role of Independent Chair

To support the role of the Chair as an independent facilitator and advisor, a more appropriate process for the appointment of a CCC Chair is required to ensure the actual and perceived independence of the Chair.

The selection process described on page 4, should be described differently as it casts a shadow of doubt regarding independence of the Chair, particularly for those contesting the project. In appointing an Independent Chair, a preferable process would consist of the Department seeking expressions of interest for appropriately qualified professionals to act as Chairpersons of CCCs. As a result, the Department will maintain a panel of appropriately qualified Chairpersons to be allocated to CCCs, rather than the Company identifying a potential Chair. In this case, any panel member can be appointed to any CCC and the Company should be required to accept the Department's nomination. This process allows for independence and transparency, overcoming the perception that the proponent has greater selective control over other members. If the



Chair is to have a greater role in appointment CCC members, it is even more important that they are not appointed by the Company.

The revised guidelines should also recognise the Independent Chairperson's role in managing communication between members of the CCC, the Department, and the community, between meetings.

Appointing community representatives

I am supportive of the Independent Chairperson having a greater role in advertising for and the selection of committee members where the Company funds the process.

If the Independent Chairperson is appointed in advance of the CCC's establishment, the Independent Chairperson role should include the preparation of and placing of advertisements into relevant newspapers (to be paid for by the company). The Independent Chairperson should then be responsible for vetting the application and make recommendations to the Department about members and alternates. This allows the Independent Chairperson to vet and recommend representatives to the Department. The diagram on page 5 should be revised to reflect this.

Alternate representatives

I support the process detailed for alternate representatives for community, company, and council members.

Meeting proceedings

In general practice 'Confirmation of the minutes of the previous meeting' immediately follows from 'Declaration of pecuniary or other interests' in committee meeting agendas. As such, the order of Committee meeting agenda items should be revised, with items 3 and 4 swapped.

Minutes of meetings

I support the clear and prescriptive requirements for minutes to record "issues raised and actions to be undertaken, who is responsible for carrying out those actions and by when."

On the recording of minutes, it is not appropriate for the Company to produce the minutes of meetings, I believe the Independent Chairperson should arrange for the independent taking of minutes to be paid for by the Company. An independent minute taker will help to ensure that there is no perceived bias in the minutes and that Company representatives can participate fully in the meeting.

The process for the distribution of draft and final appears to be contradictory. I believe only the final minutes, which have been endorsed by the Committee and the Chair, should be available on the website. The draft minutes should not be made available on the Company's website, as they have not been endorsed by the Committee and (as a consequence) nor the Chair. In some cases the minutes may contain sensitive information which have the potential to create further issues for the Committee.

Attendance by non-Committee members

While supportive of the exclusive role of the Independent Chairperson to invite non-Committee members to CCC meetings, the role of observers should be explained in the revised guidelines.

It is recommended that the revised guidelines provide that; members of the public may attend as observers subject to prior notification to the Independent Chairperson, and the ability of the venue to accommodate additional persons. The observer shall not be permitted to speak at the meeting, unless requested to do so by the Independent Chairperson.

Committee funding and remuneration

With regard to the Independent Chairperson, this section should be revised to state, "The Independent Chairperson may seek payment of sitting fees and other costs associated with the role of the Independent Chairperson, including administrative and management issues between



CCC meetings.” The statement “It is at the discretion of the Company whether or not it agrees to such requests,” should be removed with regard to the Independent Chairperson. Rather, the section should read “Once the Independent Chairperson has been appointed by the Department, the Independent Chairperson and Company will negotiate sitting fees and other costs, and those costs will be paid by the company.”

FAQ

I note, and am supportive of, the principles of the revised guidelines allowing the Independent Chairperson to play a stronger role in the appointment of members.

If any further clarification is required regarding this submission please contact Brian Elton on 02 9387 2600.

Yours sincerely

Brian Elton

Independent Chair, Dargues Gold Mine CCC

brian@elton.com.au

On behalf of the Dargues Gold Mine Community Consultative Committee



Attachment 1: CCC community representative submissions

Comments on Revised CCC Guidelines

David Lever

I suggest the following amendments to the draft Guidelines.

- » Page 3, on membership, add the word 'generally' or 'normally', as per "Membership of the Committee shall generally comprise ..."
- » Justification: this would provide for membership of the Eurobodalla Shire rep on the Dargues CCC.
- » Page 7, under 'conduct of Committee members' it states that "Committee members and alternates are expected to regularly attend meetings".
- » I suggest amendment to read: "Committee members are expected to regularly attend meetings" and "alternates are expected to regularly attend meetings, when requested".
- » I also suggest that an attempt be made to define "regularly" to give members an indication of the frequency of in attendance that could give rise to a request by the Independent Chairperson for replacement of a member.
- » A definition was given in the 2007 Guidelines, though I don't agree with the particular definition used. I suggest regularly be defined as "at least one of the previous four meetings and at least three of the previous eight meetings".
- » Also under "conduct of Committee members", I suggest expanding "engage with other members of the Committee respectfully" by adding the words: "refraining from unconstructive, threatening, intimidating and disorderly behaviour, or any form of conduct which may cause any reasonable person offence or embarrassment".
- » Justification: "respectfully" may mean different things to different people, depending on their normal behaviour and mores. Also, the meaning was spelled out in the 2007 Guidelines.
- » Page 7 also (I think), I suggest the statement concerning recording of meetings be amended to read: "Recording of meetings - by recording device, telephone or any other electronic device - is only permitted with the prior agreement of all committee members and non-committee members present".
- » Justification: I don't believe a simple majority of committee members or a majority of committee members, however defined, in support of recording should be sufficient. It could lead, for example, to non-company committee members voting to record statements by company members against their wishes. Non-committee members present should have a similar right to veto a recording, given that they may be required to speak at the meeting.
- » Page 9, I suggest deletion of the words "all documents and other" from the statement that "there is a presumption that all documents and other information considered by the Committee should be generally available to the community".
- » I believe that the Company will be more inclined to share information with the Committee at an earlier stage of a development proposal if disclosure of hard copy documents, eg preliminary draft management plans, may be restricted to the Committee. Further, availability to the general community of documents such as draft audit reports, annual reviews, etc, at the same time as they are provided to government agencies may lead to those government agencies being subject to undue pressure from the community in their consideration of the relevant document.



Peter Cormick

Following are my comments on the draft revised Guidelines.

- » As an initial, general comment, I believe that the draft is a commendable document, which substantially enhances and improves upon the current Guidelines. So, an overall tick from me!
- » I suggest that the paragraphs be numbered - for easy reference. If at a meeting where, for example, the chairman wishes to draw members' attention to a particular provision it would of course be far easier if a paragraph could be referred to.
- » I see that the term "key stakeholders" has been put in place of "stakeholders". I think that's fine but maybe some form of definition of "key" would be useful - in case we ever get into a situation in which just who is a key stakeholder becomes a contentious matter.
- » Re bottom right of page 2: "provide advice to the Company ...to minimise any impacts". This provision really cannot be taken advantage of unless the committee is provided with independent, expert advice - unless of course such expertise exists within the committee. Your own expertise, Brian, might be useful in instances suggested by this provision and, very likely, you could point the committee to possible outside advice. But of course there is the issue of costs!
- » Re bottom right of page 3, top of page 4: Independent Chairperson. Except for the options presented a little further on under this heading - where the D-G can really do as he or she pleases - this provision does concern me. There is a clear potential for cronyism here. Mates within the industry looking after mates within the industry.
- » Re top right of page 4: "Where three or more committee members are concerned ...with a view to making a new appointment". Given that, as we have, three members of the committee are company reps, there is scope for misuse of this provision. I'm not sure how this ought to be handled but, somehow, I think that the number of committee members who might be concerned about possible bias by the chairperson should be a mix of company, community representatives and council reps. In our own CCC, we have in total 3 company reps (I believe), 7 community reps and 2 council reps: 12 in total. So, given the very nature of Community CC's and the predominance of community reps, it would not be unreasonable to expect a 'deputation' to comprise at least one community rep, a council rep and at least one other member (whether community or company). Thus, examples of these suggested minimum-requirements might include combinations such as:
 - > 1 council rep + 2 company reps + 1 community rep
 - > 1 council rep + 3 company reps + 1 community rep
 - > 1 council rep + 2 community reps
- » Re bottom right of page 4: I suggest that "current residents of the area" be amended to read "current residents of the areas affected or potentially to be affected by the project".
- » Re top left page 5: I suggest that there is a need for elaboration of "recognised" in the composition requirement "a representative of a recognised environmental organisation". Recognised by whom is the question to be answered.
- » Re top left of page 7: As we know, the current requirements concerning the publication of minutes - to be placed on the company website within 28 days of each meeting - are not met by the DRCCC. And the proposed requirements - of the draft minutes being placed on the company's website within 28 days of the meeting - present obvious difficulties. In my view the minutes should not be published until they are finalised. As to who should be responsible, I see that the draft states that "The minutes are normally to be recorded by the Company ...". Which begs the question, Brian, does the company meet your DRCCC-related



expenses? If so, then I suppose we could regard your minute-taking services as those of the company, contracting out to you (?)

- » Re middle right of page 7: I think we need to spell out more clearly how often (rather than how regularly) members ought to attend before consequences are experienced: maybe in terms of numbers or proportions of meetings per year.
- » Re bottom right of page 8 and top left of page 9: At an appropriate time I will raise this (current) requirement placed on the company, of providing copies of the documentation listed. I have no recollection of ever having been provided with an audit report, for example. And, significantly, these reports are to be provided to members of the committee "at the same time as they are submitted to agencies". Again, I have no recollection of that to date.
- » I believe that the current requirement, which is also in the draft, of the company having to "consult with the committee prior to seeking approval for a modification to its conditions of consent", ought to be expanded and state that the results of the consultations are to be included in the application for a modification.
- » I think that the Toolkit with its various forms, advice, protocols and code of conduct, is excellent.



Belinda Royds

I haven't yet done a compare and contrast, my only question / comment is to confirm that we still have flexibility within these Guidelines to determine certain things, for example I am very happy with you (or more properly Hannah) preparing the minutes, whereas the Guidelines specify that these are to be prepared by the company. Also that the arrangement of alternate members that you have put in place seems very sensible and should be able to continue.



Jackie French

Suggested Amendments for the CCC Guidelines
11 March 2016

- » The independent Chair should not be appointed by the company. The Department should compile a list of potential Chairs and appoint from that list, otherwise independence is unlikely. 'Independent' needs to be just that, not a company appointee.
- » The independent Chair should have no business or personal connections with any executive, employee or contractor of the company and must declare any existing connection to members of the CCC, and must also declare any connection that occurs during their appointment with the CCC members as soon as it occurs.
- » Any Chair who threatens a CCC member either in words or by actions should be dismissed. If this occurs, no warnings are appropriate, as such action would suggest that the individual is not suitable for their position, nor can a CCC continue to function if trust in the Chair is eroded.
- » Any company employee or community CCC member who threatens another member must be suspended from the CCC immediately.
- » The company must not have any role in the choice of CCC members. All nominations should be withheld from the company until the choice has been made, to ensure that there is no bias and that the members truly represent all views of the community.
- » The company representatives must not outnumber the community representatives.
- » Only community representatives on the CCC will have the right to vote on motions coming before the CCC. The company representatives on the CCC will not have voting rights, but may put forward motions to be voted upon.
- » The community representatives must be chosen from all sectors of the community to truly represent the community viewpoints, and not be limited to those who support or have no reservations about the project.
- » Where possible, CCC members should not be employees of the company nor their contractors or subcontractors nor be major shareholders. They should also not be related to employees or contractors. In small communities, or communities where the company is the major industry, however, this will be unrealistic, and should be suspended.
- » Members who are employees or contractors, or who have close family connections with employees or contractors should declare their relationship with the company to the other members of the CCC.
- » A CCC member who has expressed doubts about either the project as a whole, or any aspect of the project, cannot be dismissed for not supporting the project as a whole or in part.
- » The Chair will allow motions from all members of the CCC. Any refusal will be grounds for the immediate removal of the Chair on appeal to the Department.
- » The Chair will take comprehensive notes of the meeting, and also record the meeting. This recording should be confidential, serving only as a record of the meeting in case there is a dispute about what was said at the meetings that cannot be resolved without reference to that recording and that reference should be limited to the matter in dispute. Without this it is impossible to verify independently what has or has not been said.
- » The Chair will minute any statement or motion made at the meeting upon request by any member of the CCC. At the moment it is possible for the Chair to select only those



statements they wish to include which may not represent the mood of the meeting or include statements that need to be recorded.

- » All motions will be recorded, as will the names of those who propose them, second them and vote for them.
- » A summary of the CCC meetings, discussions and motions, should be provided within a reasonable time frame for distribution to all members of the public, including any matter specifically requested by a member of the CCC unless that matter has been discussed in confidence.
- » All discussions and disclosures made at the CCC should be regarded as open for distribution to the public, unless notice is given in writing to all CCC members that the specific matter is confidential.
- » An independent adjudicator should be appointed by or from within the Department of Planning, so that any CCC member can appeal to the adjudicator if they believe that:
 - > the records of a meeting are incomplete, unrepresentative or if there has been any impropriety or irregularity not dealt with by the Chair
 - > that the company has refused to answer questions adequately or honestly. This adjudicator would be empowered to penalise the company for impropriety, including fines if questions are not answered within a reasonable timeframe, or in a complete and open manner, except where a matter may be held to be commercial in confidence or of a personal nature.
- » The Department should appoint an independent adjudicator to investigate complaints made through the CCC about actions by the company or their contractors. At the moment complaints are dealt with solely by the company and may be dismissed with no investigation, and no further avenue of appeal. This system of appeal to an independent authority is vital to the honest and transparent running of a CCC, and for the honest and transparent relations between a company and the public.
- » There should be realistic penalties for failure to disclose information to the CCC within 30 days, or if false or misleading information is given to CCC members. A response of 'the information is available on the web site' is not appropriate. All responses should be in clear and accessible form ie data must be interpreted so the layperson can access it.
- » Meeting times shall be chosen by a consensus of community representatives, as determined by the Chair, and not by the company, to ensure that the company does not choose times when CCC members will not be available.
- » Monthly inspections of the project must be arranged if and only if requested by CCC members, with photography permitted to allow the community at large to see what has occurred at the site.
- » There should be an annual independent cost-benefit analysis made, NOT prepared by the company, evaluating economic, social and environmental aspects of the project. This cost-benefit analysis should be summarised and made available to all members of the public.
- » That where more than one Council may be affected by the project, each Council can appoint one member to sit on the CCC, and that Council-appointee will be regarded as a community representative member of the CCC and so permitted to vote.
- » It must be acknowledged that the role of the CCC is to represent community views to the company, and to transmit information from the company to the community. As such, it has no role as a PR agent for the company. Neither the CCC as a whole, nor any individual, should be reproached by any employee of the company for failing to convince the community to accept plans or actions of the company.



- » Legal and technical experts may be invited by members of the CCC or the company to help in technical or legal discussions. Due notice must be given to all members of the CCC, at the discretion of the Chair, and visiting experts may be asked to absent themselves for confidential matters.
- » Media representatives may attend meetings, at the discretion of the Chair.
- » Where there is insufficient time for all matters to be raised at a CCC meeting, written questions may be presented to be answered within 30 days.
- » That penalties should be put in place if the company is shown to have misled the CCC, or fails to notify the CCC of matters that may adversely affect the community.



Tom Wells (Dargues Gold Mine CCC alternate member)

Thank you for the opportunity to comment on the Revised Community Consultative Committee Guidelines. I am generally in support of the new guidelines. My main concern is that Committee meetings operate within their own microcosm, removed from the broader community, policy makers, and planning authorities. My suggestions are as follows:

- » That a member of the Department of Planning and Environment, ideally from the Planning Assessment Commission, be routinely invited CCC meetings by the Chair when a Project Modification is either on exhibition or under assessment by the Department.
- » That the minutes for each meeting be posted on the Department of Planning website pertaining to the project in question (less any sensitive personal or commercial in confidence material).
- » Separately, that the Chair notifies the Department of Planning when the Company fails to provide responses within the specified 28 days to questions tabled at the meeting, and which have not been answered at the meeting. Details of the outstanding matter (i.e the question itself) should be included.
- » That the Company be required to post the minutes for each meeting on their website within a reasonable timeframe (14 days?) of receiving or completing the minutes. Unity Mining, for example, are yet to post the minutes from the CCC meeting of December 2015.