



PEABODY ENERGY
AUSTRALIA PTY LTD

ABN: 93 096 909 410

100 Melbourne Street
South Brisbane Qld 4101

GPO Box 164
Brisbane Qld 4001
Australia
Tel + 61 (0) 7 3225 5500
Fax + 61 (0) 7 3225 5555

31 March 2016

Department of Planning & Environment
22-23 Bridge Street
SYDNEY NSW 2000

To: NSW Department of Planning and Environment

SUBMISSION: DRAFT COMMUNITY CONSULTATIVE COMMITTEE GUIDELINES FOR STATE SIGNIFICANT PROJECTS

Thank you for the opportunity to provide a submission from Peabody Energy Australia Pty Ltd (Peabody Energy) on various aspects of the draft *Community Consultative Committee Guidelines for State Significant Projects*. Peabody Energy notes that a review of the draft guidelines has also been prepared for the New South Wales (NSW) Minerals Council with input by Peabody Energy so this submission does not seek to duplicate this review. Peabody Energy supports the submission made by the NSW Minerals Council.

Background

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 operates three mine sites in New South Wales:

- The Wambo Coal Mine is a combined open-cut and underground mine located 30 kilometres (km) west of Singleton that produces thermal coal and pulverized coal injection coal for export and domestic markets. The Wambo Mine workforce consists of approximately 480 people.
- The Wilpinjong Coal Mine is an open-cut mine located 40 km north-east of Mudgee that produces a high quality thermal coal for export and domestic markets. The Wilpinjong Mine workforce consists of approximately 400 people.
- The Metropolitan Mine is an underground mine located 30 km north of Wollongong near the township of Helensburgh that produces coking coal for export and domestic markets. The Metropolitan Mine workforce consists of approximately 260 people.

General comments

Peabody Energy welcomes the development of the draft *Community Consultative Committee Guidelines for State Significant Projects* (Guidelines), which provide guidance on the scope, establishment and operation of Community Consultative Committees (CCCs).

Peabody supports the majority of the proposed Guidelines, however there are some important changes required to ensure the final Guidelines clarify the role of CCCs and do not impose low-value, onerous requirements on Company resources.

A key tenet of Peabody's submission is that under the Guidelines, the role of the CCC is expanded from its original purposes as a community committee which provides feedback to the proponent on aspects of the project relevant to the community, to a body engaged in decision-making processes during the development of the project.

1.1. The Guidelines unnecessarily expand the role of CCCs to imply a quasi-regulatory role

Despite the fact that the Guidelines state that CCCs are not a decision-making body and perform an advisory role only, they have been written and scoped in a way that implies quasi-regulatory environmental oversight and/or an official role for CCCs that goes beyond an advisory capacity.

There are numerous examples of this throughout the document, however of most concern, are the following examples:

- Reference to the CCC's input into scoping of issues and commenting on assessment documentation. This is a technical process and should be out of scope for a lay committee.
- The CCC should not have a role in the "review of the performance of the project"¹ or the "review [of] draft management plans and provid[ing] suggestions for improvement."² This is the regulator's role and duplicates the conditions of consent. Additionally many CCC members do not have the technical knowledge or operational experience to appropriately comment on draft management plans.
- While the CCC should be able to access general information about types or extent of community complaints, it should not have a role in the handling of any particular concerns or complaints³ as this is a Company responsibility. Reviewing these is the responsibility of an auditor or regulator.
- The use of the language such as "inspections"⁴ invokes a sense of trying to find problems (i.e. the job of a regulator or auditor). Using the word "tours" or "visits" is a more appropriate term for a CCC site visit.
- It is unreasonable and unnecessary for a CCC to release statements or other information to the media or the public about a project.⁵ There is a high risk of inaccuracy associated with this which could impact on company or project reputation. Dissemination of information about a project should be left to the Company.
- Committee training is inappropriate in the context of a non-regulatory or decision-making role for a CCC. This is particularly the case for training on "environmental management or community relations"⁶ as training a CCC implies that its members need to be equipped to regulate a project. (See also, 1.5)

¹ NSW Department of Planning and Environment 2016, 'Draft Community Consultative Guidelines', p. 2.

² Ibid. p. 3.

³ Ibid.

⁴ Ibid. p. 3.

⁵ Ibid.

⁶ Ibid. p. 9.

Recommendation

- Review the language in the Guidelines to remove reference to, or implication of a quasi-regulatory role for CCCs. Instead, the Guidelines should be framed around a primary purpose for CCCs as an avenue to discuss a project with its local community.
- Incorporate over-arching objectives of CCCs into the Guidelines to set the intent of what a CCC is and is not.

1.2. The Guidelines impose unnecessary and onerous demands on companies

The quasi-regulatory role for the CCC discussed in Section 1.1 inadvertently imposes additional requirements for companies to provide a wide array of reports, monitoring results and performance related documents (that may be only in draft form), as well as responses to any comments on these documents. In effect, companies will be required to engage with another 'regulatory' body in relation to their project. This unnecessarily duplicates existing approval and regulatory processes, and goes against the government's intent of streamlining regulation.

The requirements create an unnecessary burden on Company representatives, adding to existing Company cost and time pressures. Furthermore, a requirement to respond to ad-hoc, persistent requests for information creates an avenue for CCC members with anti-project positions to disrupt, delay and frustrate company processes. This not only impacts on Company costs and time but ties up resources from community relations activities which deliver a much greater broader benefit.

Some of the requested information could also potentially be confidential, have the potential to be misrepresented (e.g. seasonal data out of context) or have safety implications, and not intended to be made publicly available (for example, details of complaints and complainants or details surrounding blasting and explosives). Confidential information or information with potential safety implications should not be required to be provided to CCCs.

Another example of an unnecessary burden on companies is the imposition of regular 'inspections', potentially with only 48 hours' notice. The ability to undertake inspections at such short notice should be only allowed for government / union inspectors or regulators (or their representatives).

Recommendations

- Do not impose requirements on companies to provide any information to CCCs that is not already made publicly available.
- Limit the number of site visits that can be undertaken in any one year to a maximum of four, unless the Company agrees to more. At least two weeks' notice should be provided to the company prior to any desired site visit.

1.3. It is unnecessary for representatives from environmental groups to have special consideration in the formation of a CCC

It is unclear why a CCC should specifically provide for representation by environmental groups but not by other community groups with a broader social interest - for example chambers of commerce or service providers.

If the purpose of CCCs is to be a representative body which provides a conduit of information between the local community and a company, then specific criteria for environmental groups should not be required. Any member of the CCC should be required to meet the selection criteria for community representatives (which may include environmental interests), therefore specific environmental criteria are unnecessary.

To ensure a genuine representation of local community interests, environmental representatives must be required to reside in the relevant local government area(s) and not be from known environmental activist groups that illegally access or disrupt operations.

Failure to impose a 'must live locally' requirement has the potential to give a disproportionate voice to professional activists whose interests may not be aligned with those of local residents.

Recommendation

- Remove specific CCC membership selection criteria for environmental representatives. Alternatively, ensure that any environmental representatives are from the relevant local government area.
- Set the objective that the CCC be representative of the broader community and include diverse membership representing a range of community interests and perspectives.
- CCC community membership should be limited to a 'must live locally' requirement unless otherwise agreed to with the Company, Chair and Department.

1.4. It is inappropriate for funding and remuneration of CCC members to be a Company responsibility

The Guidelines set an unnecessary and false expectation that the CCC members should be funded or remunerated. CCC members should not be motivated to join a CCC for financial gain. Any requests for funding from members puts companies in an uncomfortable position in denying payments, when their intent is to maintain and improve relations with its CCC members. Any payments to a quasi-regulatory committee could also be perceived by outsiders as providing an avenue for bribery of CCC members, and is therefore inappropriate.

If DPE believes that members should be funded or reimbursed, then this should be at the expense of the Department.

Recommendation

- Remove reference to funding or remuneration of CCC members.

1.5. Committee training should not be necessary

It is not clear why training may be required for CCC members. An Independent Chair is supposed to be selected based on his or her ability to facilitate, mediate and resolve conflicts, so this training

should not be required for them. CCC members should not be required to resolve conflicts, as this is not their role, so training for this is also unnecessary. And providing training for 'best practice' environmental management and community relations sets an unreasonable expectation that that these should always be implemented – 'best practice' isn't always relevant or feasible (environmental management and community relations results should be fit-for-purpose and outcomes focussed, and the value of 'best practice training' in this context is not clear and has the potential to be unhelpful).

Further, community members are not expected to be specialists in either of these topics. The onus should be on company representatives to effectively communicate technical elements to lay people, rather than seeking to make specialists of them.

Recommendation

- Remove committee training from the Guidelines.

1.6. Further requirements for CCC representation are necessary

The Guidelines lack guidance on a number of situations that CCCs and its members experience, for example:

- Requirements and any restrictions for alternative representatives (e.g. a limitation on the number of meetings they can attend so they are not, in effect, permanent members; when an alternative representative can be nominated and within what period prior to a meeting).
- Term of CCC members and Chair. It would be appropriate for committee membership and Chair roles to expire after a set period (suggest every three years) in order to allow other members of the community an opportunity to join a CCC. In reappointing previous members, DPE could consider a member's contribution to the community for their participation in the previous term (based on the advice of the Independent Chair).
- Dispute resolution if there is disagreement or performance issues between the Chair and the Company.
- CCC members should not be allowed to be members of several committees across multiple LGAs, unless they are considered to be local to more than one LGA.

Recommendation

- Provide further guidance and restrictions in relation to:
 - Requirements for alternative representatives.
 - Term of CCC members and Chair.
 - Breadth of eligibility for CCC membership of any individual.

1.7. The transitional arrangements for existing CCCs are not clear

It is unclear what the expectations are of current CCCs whose establishment pre-dates the guidelines.

Recommendation

- The Guidelines should not apply retrospectively. Existing CCCs must be allowed to continue to function under current arrangements.

1.8. The company should be consulted ahead of final appointment of CCC representatives

Company representatives generally live locally themselves and work closely with community members as part of day-to-day operations. Environment and community officers will often have considerable insight into the types of CCC members community members might make. The Department should draw on this information, consulting with the company before finalising its CCC member selection process. This gives the company the chance to flag and discuss any potential issues with the Department ahead of a member's appointment.

Through this consultation, the Department will also be able to better understand the types of relationships applicants may have had with operations, and whether these might impact on that representative's capacity to have an objective approach to the committee.

Member selection criteria should also include the ability to communicate effectively with the community group they represent and a willingness to represent broader community interests as opposed to personal issues.

Recommendations

- That the company be able to review and provide feedback on a proposed list of CCC members ahead of their appointment.
- That member selection criteria also include:
 - The ability to communicate effectively with the community group they represent
 - A willingness to represent broader community, as opposed to personal interests (like compensation).
- Clarify expectations of CCC members that they facilitate access to information by to the broader community. There should be little need for 'observers' and open forum-style meetings if CCC members are fulfilling their roles as conduits of information.
- That there be provision for a minute taker from the company in addition to the company's 2-3 member allocation.

1.9. It is inappropriate for the CCC's to seek to influence a company's community investment expenditure.

A company's community investment budget is a matter for that company and the company alone.

Provision in the Guidelines for CCC members to make representations for funding for specific initiatives could not only create a perception of bias in the broader community towards CCC members and the organisations they represent, but also undermine the Company's prerogative to make its own decisions about targeted funding allocations.

Recommendation

- CCC members may apply for funding for community organisations or events through the company's standard community investment application process
- Remove the reference to that section of the CCC's role which specifies 'Identifying community initiatives to which the company could contribute'.

Thank you for the opportunity to provide these comments. If you need any further information regarding this submission, please contact Suzanne Cryle on 07 3018 2915 or at scryle@peabodyenergy.com.

Yours sincerely

A handwritten signature in black ink, appearing to read "Lees", written over a horizontal line.

Jamie Lees
Director Environment
Peabody Energy Australia

