



Revised Community Consultative Committee Guidelines for State Significant Projects

Submission, March 2016

Never Stand Still

Law

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Significant Projects*

Submission

Environmental Law Group
UNSW Law

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I. Overview

This submission is made by the UNSW Environmental Law Group, drawing on our research, teaching and professional experience in environmental law. In particular, it is informed by our experience working on public participation, regulation and collaborative governance in Australia and internationally.

We welcome the opportunity to comment on the *Revised Community Consultative Committee Guidelines for State Significant Projects*.

We are supportive of the revision and particularly the expansion of the potential for community consultative committees (CCCs) beyond mining projects. There are many gains to be made through cooperation, dialogue and utilising multiple sources of knowledge and abilities. For example, the active participation of local stakeholders in regulatory decision-making and monitoring processes is more likely to be sensitive to the local complexities of a development's impact on the local context than centralised governmental decision-making. Ongoing face-to-face negotiation, information sharing and monitoring through community consultative committees are also more likely to achieve innovative solutions, reduce conflict between local community and developers and foster adaptive problem solving processes than traditional government dominated rulemaking.¹ Consultative communities can also add to community right to know principles, increasing transparency of information, and using this 'new' knowledge, can bring substantive improvements to major projects.

Our submission addresses four main points:

- **Establishment of committees.** We recommend that the guidelines contain presumptions that CCCs will be established for certain types of projects and for projects attracting a certain number of objections. We also recommend that avenues for communities to request the establishment of a CCC be provided.
- **Duration of committees.** We recommend that the guidelines recognise the important contribution made by CCCs to complementing government monitoring activities, and provide for CCCs to continue in operation for as long as this role is required.
- **Appointment of committee members.** We recommend that the guidelines provide for a greater number of community and/or environmental members, and for greater efforts to engage the wider community in the selection process.
- **Broader engagement.** We recommend that the guidelines provide a clearer mandate for engagement with the wider community by CCCs, and support this through the provision of consolidated information about all CCCs operating in NSW.

¹ Shapiro S, "Administrative Law After the Counter-reformation: Restoring Faith in Pragmatic Government" (2000) 48 U Kan L Rev 689; For further discussion and references see Holley C and Gunningham N 'Environment Improvement Plans: Facilitative Regulation in Practice' (2006) 23 *Environmental and Planning Law Journal* 448, 451.

2. Establishment of committees

We are supportive of the extension of the revision to extend the current guidelines beyond mining to include all State significant projects, and the suggestion that committees can be set up earlier in the project development process. Community input can be valuable at all stages, from project development and implementation, good to recognise this.

However, it would be helpful to see more information about this potential flexibility. In particular, it would be useful for the guidelines to provide greater clarity around the types of projects for which CCCs will be established. While it is unlikely there will ever be a one size fits all list of developments, there are many large developments with likely environmental and social impacts (e.g. designated developments) where the presumption should be that a committee will be established. A table similar to Schedule 3 of the EPA Environmental Planning and Assessment Regulation 2000 would be useful to indicate the types of projects for which CCCs would usually be established.

Additionally, where projects are contentious a presumption that a CCC will be established would also be appropriate. Where there are more than a certain number of objections to a proposal, for example, there could be a presumption that a CCC will be established. Establishing avenues for local communities to request a committee should also be pursued.

We strongly support the introduction in the revised guidelines of provision for regional committees, or periodic, region-based community information sessions or similar, to discuss cumulative impacts if there are a number of CCCs within an LGA or region. However, it is important to recognise that operating at larger scales may mean community representatives on regional committees will need greater levels of support to cover their travel, time and other transaction costs. The revised guidelines should provide for such support, for example by giving community members a greater say in the scheduling of meeting times, distributing information well ahead of meetings and covering community travel costs to attend such meetings.

3. Duration of committees

More clarity is needed in the guidelines with respect to the duration of CCCs. We recognise that there may be categories of development that have limited ongoing impacts to local area, making it redundant to have an ongoing committee. However where there are local concerns or significant likely impacts on the environment, the benefits of ensuring committees continue throughout the life of project are significant. Ongoing monitoring is very important, particularly given that local, state and federal government departments are invariably short of resources to ensure that conditions of consents and licences are fully complied with. Complementing government monitoring activities is a particularly valuable benefit brought by CCCs. We would be concerned if this function of CCCs was not properly supported

throughout the life of a relevant development. The guidelines should make it clear that CCCs will continue for as long as environmental impacts remain a possible issue.

4. Appointment of committee members

We note that composition of CCCs is not proposed to change, maintaining numbers at 2-3 from the company, 3-5 community and/or environmental members, one council member and one independent Chair. This is a small number of community and environmental members, and accordingly provides scope to represent only a small number of interests. We recommend that this be increased so that there could be up to ten community and/or environmental members. Given that CCCs are advisory only, there should be little concern about such an increase.

Appointments to the committee seem overly procedural, relying on limited communication (ie. through advertising) and sheltered from local input. If the purpose of the committees is to ensure that the community is adequately represented on the committee, then greater efforts are likely to be needed to engage the wider community in the selection process. For example, in addition to advertising, public meetings should be held in the local area to both inform people about the committee process and to enable people to put their names forward. There should also be efforts to reach out to certain (eg under-represented) groups, with potential to provide funding to cover time/travel if necessary in the circumstances.

Where committee members are unable to attend a meeting, we note that the revised guidelines propose to change the way in which alternative community representatives are appointed. For company and council members, the relevant company or council appoints the alternative. For community and environmental members, however, the revised guidelines propose that alternatives would be appointed by the Secretary. The rationale for this change is not explained. We do not support this change, and recommend that the Secretary be involved in appointing alternatives only if the community or environmental member is unable to find their own replacement.

5. Broader community engagement

We are strongly supportive of the statement in the current and revised guidelines that committee members are encouraged to discuss issues and disseminate information about the project with the wider community, including special interest groups. The successful operation of the committees in terms of feeding back information to the community will hinge on high levels of transparency. In that regard, there should be much more effort to make committees public and transparent. We support the presumption in the revised guidelines that all documents and information considered by CCCs should be generally available to the community. However, as in the current guidelines, effort must be made to make information accessible beyond the internet. The provision in the current guidelines that meeting minutes

be made available “in another public place agreed to by the committee (eg the local council offices or a public library)” should be reinstated. It is important not to assume that everyone has internet access.

Beyond making information available, CCCs should seek to engage more actively with communities who may be affected by a project. The revised guidelines should provide that CCCs consider holding public meetings at least once a year.

At present, it is difficult to find information about CCCs in operation now or in the past. It would be extremely useful if the Department was to provide a consolidated source of information (eg web portal) about all CCCs. This could include information such as:

- Details of projects with committees, including locations, dates, consent and other approvals,
- Committee members and contact details,
- Reports and other information produced by committees,
- Recommendations made by committees to the relevant company and or government authority, responses to those recommendations,
- Meeting dates and locations, and
- Problems, successes, lessons learned.

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