



NEW SOUTH WALES ABORIGINAL LAND COUNCIL

ABN 82 726 507 500

Executive Director
Resource Assessments & Business Systems
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Executive Director,

Proposed Community Consultative Committee Guidelines for State Significant projects

Thank you for the opportunity to provide comment on the proposed *Community Consultative Committee Guidelines for State Significant projects (proposed guidelines)*.

The NSW Aboriginal Land Council (**NSWALC**) supports efforts to improve community consultation in relation to all projects particularly for State Significant Developments (**SSD**). However, we are concerned to ensure that the proposed guidelines reflects best practice community engagement and establishes a process that effectively addresses the concerns of local communities. NSWALC also seeks to ensure that all projects that have the potential to impact on Aboriginal culture and heritage are subject to genuine engagement with Aboriginal communities and provide robust Aboriginal heritage protection requirements.

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 23,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal peoples of NSW.

NSWALC provides support to the network of 120 democratically elected Local Aboriginal Land Councils (**LALCs**) in NSW. The network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities. As elected bodies, Aboriginal land councils represent the not only the interests of their members, but of the wider Aboriginal community, and have functions to protect and promote Aboriginal culture and heritage.

While the purpose of this submission is to address specific elements of the proposed guidelines, we wish to reiterate that broader legislative reform is urgently needed to ensure engagement with Aboriginal peoples and protections for Aboriginal culture and heritage is consistent with best practice standards and principles including those outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*.

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While it appears positive that the NSW Government is aiming to provide opportunities for communities to be involved in State Significant projects earlier, and that Community Consultative Committees are to have more independent Chairs, there are a number of issues NSWALC wishes to raise.

Purpose of the Committee

NSWALC notes that the proposed Guidelines outline that Department will decide when Committee's are to be established, and that the Community Consultative Committee (**the Committee**) has an advisory role only.

Recommendation 1: That clarification is provided regarding how the Committee process will complement and interact with other forms of community consultation. Committees should not replace other forms of community consultation and engagement.

Recommendation 2: That clarification is provided regarding whether Committees able to seek independent advice, other than input from the Company and Government Departments.

Membership of the Committee

The proposed guidelines do not require LALCs or relevant Aboriginal people to be part of the Committee, but state:

Membership of the Committee shall comprise:

- 1. One Independent Chairperson;*
- 2. Three to five community representatives, including in some cases representatives from environmental groups;*
- 3. One council representative; and*
- 4. Two or three Company representatives, including the person with direct managerial responsibility for environmental management.*

As currently drafted, the proposed guideline does not reflect best practice standards and the principles outlined in the United Nations *Declaration on the Rights of Indigenous Peoples*, including:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.¹

Aboriginal peoples and organisations have rights and interests in respect to proposed projects and must be provided with opportunities to comment on the impacts of proposed projects including social and economic impacts. As such, it is recommended that Aboriginal people and organisations are represented on the Committee.

¹ United Nations Declaration on the Rights of Indigenous People, available at:
http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

In addition, it is unclear why the Committee would include members from the Company. If the intent of the Committee is to provide advice from a community perspective, it would appear more appropriate for membership of the Committee to be made up of genuine community representatives, with representatives of the Company to attend to undertake specific roles such as to provide information and respond to advice from the Committee.

Recommendation 3: That the composition of the Committee be revised to include a representative of Local Aboriginal Land Councils (LALCs) or an Aboriginal person.

Recommendation 4: That clarification is provided regarding the role of Company employees on the Committee.

Aboriginal culture and heritage

It is unclear whether the proposed Committees will be asked to deal with Aboriginal culture and heritage matters, and if so how such matters will be dealt with. It is not considered appropriate that individuals or groups other than Aboriginal people or organisations would have a say in these matters.

Recommendation 5: Clarification is needed regarding the scope of issues that the Committee will address. Only Aboriginal people should be involved in matters regarding Aboriginal culture and heritage.

Recommendation 6: If Committees propose to deal with Aboriginal culture and heritage matters, further consultation is needed with peak Aboriginal organisations including NSWALC and NTSCORP and Aboriginal peoples regarding how Aboriginal heritage matters will be dealt with.

Recommendation 7: Clarification is sought regarding the ability of LALCs and Aboriginal groups to have a say in matters outside the Committee process.

Independent Chairperson

The proposed independent Chair role is welcomed, however there are a range of measures that could be implemented to improve the impartiality, transparency and accountability of this role. The Chair role has a number of significant and important responsibilities that must be carried out effectively to ensure the integrity of the Committee process.

Recommendation 8: That the Department explore opportunities to establish a suitable list of independent facilitators with appropriate skills to Chair committees, rather than the Company nominating two options for Committee Chairs.

Recommendation 9: That further criteria is developed regarding who is eligible to be appointed as an Independent Chair including that Chair should not be an employee or former employee of the Company or similar Company, that the Chair is free of any conflicts of interest, and that clear processes are established to address any concerns raised by community representatives.

Nomination and appointment process

The proposed guidelines outline that the nomination, selection and appointment process is driven by the Company (including the Company providing nominations for an independent Chair). The Department decides who becomes a member of the Committee based on a number of selection criteria.

As outlined above, it is essential that Aboriginal people are provided with genuine opportunities to participate in the Committees.

Recommendation 10: Best practice communications strategies are needed to ensure LALCs and Aboriginal peoples are aware of opportunities to participate in Committees. The proposed guidelines should be amended to require that specific written notification should be provided to LALCs.

Reporting mechanisms

The proposed guidelines outline some reporting requirements such as:

- Independent facilitator to report to the Department annually,
- Minutes of the Committee to be published within the 28 days, and
- The Company to provide a range of reports to the Committee.

However, to improve the transparency and accountability of the Committee process reporting requirements should be strengthened and mandatory. This could be achieved through including reporting requirements in conditions of consent, and ensuring that there are enforcement mechanisms and penalties where reporting requirements are not implemented.

There should also be mandatory public reporting requirements of the concerns or issues raised by the Committee and the Company's response, in addition to the project's performance against conditions of approval.

In addition, to ensure community consultative committee are not a 'tick a box' exercise, there should be mandatory requirements that Company's provide the comprehensive, accurate and relevant information to Committee's to allow the Committee to undertake its functions.

Recommendation 11: That the Department develop more comprehensive, mandatory and enforceable public reporting requirements.

Recommendation 12: Company's should be required to publicly report whether proposals or initiatives have been supported by the Committee or otherwise, and how the Company has implemented the advice of the Committee.

Committee Training

Building capacity of committee members to be able to effectively carry out their roles is essential. The proposal for Company's to support requests for training from Committee members is welcomed.

Aboriginal community representatives and contractors

The proposed guidelines state that *"Employees or contractors of the Company are not eligible to be appointed as community representatives"* (page 4).

A number of issues have previously been raised by Aboriginal peoples regarding how processes similar to the proposed Committee process deal with Aboriginal peoples who have been engaged to undertake culture and heritage assessments due to statutory or traditional rights and interests in an area, but also wish to participate in broader community consultation processes.

It has been made clear that the strong preference for many communities is for site assessments to be conducted by Aboriginal people who are traditionally connected with an area, have statutory and community roles (such as LALCs) or have relevant knowledge based on their connection to the community .

Such people are often those mostly likely to be interested in participating in related community consultation processes. It is important therefore that the proposed guidelines do not discourage employment of those Aboriginal people who have the most relevant knowledge and are most supported by the broader Aboriginal community to offer advice.

It is essential that Aboriginal knowledge is recognised and respected in the proposed guidelines. Aboriginal people must not be expected to provide knowledge or services for which non-Aboriginal people would be paid a fee. Site assessments are also often an important source of income for LALCs and for Aboriginal elders.

Recommendation 13: The proposed guidelines must provide proper recognition of the specialist culture and heritage skills and knowledge offered by Aboriginal people, and clarify that Aboriginal people should not be ineligible for participating in Committees for providing services relating to Aboriginal culture and heritage.

Committee funding and remuneration

The proposed guidelines should provide more guidance regarding what are the 'reasonable and necessary' costs to be met by the proponent in relation to consultation. This includes recognition that particular organisations or individuals may require assistance with costs such as travel to be able to attend consultations.

I trust that genuine consideration will be given to our comments and that responses to the issues we have raised will be forthcoming.

If you have questions regarding the content of this submission, please contact the NSWALC Policy and Programs Unit on 02 9689 4444.

Yours sincerely,



Lesley Turner
Chief Executive Officer

Date:

31/3/16