

12 April 2016

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

Dear Sir/Madam,

## **Submission Regarding Draft Community Consultative Committee Guidelines**

Thank you for the opportunity to make a submission in relation to the Draft *Community Consultative Committee (CCC) Guidelines for State Significant Projects*. Please see attached a detailed submission in relation to the draft guidelines.

NSW Ports is supportive of the CCC process for specific projects and similar consultation forums for broader port precincts. Consultative committees provide an excellent opportunity for the exchange of information, and the discussion of issues of community concern.

While it is useful to have guidelines to underpin the function of CCCs, NSW Ports is concerned that the draft guidelines are too prescriptive and do not allow for proponents and stakeholders to agree on their own governance arrangements for each Committee. The guidelines should set out key principles and considerations to be addressed in the formation of each Committee and allow the parties to resolve matters of detail by agreement.

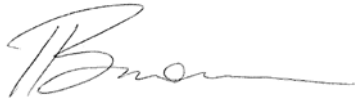
Matters of concern arising from the draft guidelines include:

- The need for flexibility regarding the scope and purpose of Committees to incorporate activities across a broad precinct regardless of whether they relate to state significant projects and with allowance for multiple companies that are developing and operating within the precinct.
- The role of the Department in the appointment of Chairpersons and Committee members.
- The role of the Chairperson and the need for liaison with the Company in the conduct of the role.
- Unrealistic expectations regarding training for committee members
- Inconsistencies between the proposed requirements in the guidelines and those which have been specified for projects in Secretary's Environmental Assessment Requirements, Conditions of Approval and approved terms of reference.

- Inappropriate provisions which extend the role of the Committee far beyond that of an advisory body to effectively become a quasi-regulator.

If you require any clarification in relation to the matters raised in this submission, please contact me (ph: 02 4275 0714, e: [trevor.brown@nswports.com.au](mailto:trevor.brown@nswports.com.au)).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T Brown', with a long horizontal flourish extending to the right.

Trevor Brown  
**Environment Manager**

## Community Consultative Committee Guidelines – State Significant Projects NSW Ports Submission on Draft Guidelines

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NSW Ports has reviewed the draft Community Committee Guidelines: State Significant Projects (the draft Guidelines) and provides the following comments for consideration in the finalisation of the Guidelines. NSW Ports currently manages two Consultative Committees required under Major Project Approvals and the comments provided below reflect the previous and current experience of NSW Ports as a 'Company' within the process that is being reviewed.

### **Points of Support**

NSW Ports strongly supports the following items set out in the draft Guidelines:

- ***Purpose of the Committee (pg 2)***: that a Community Consultative Committee (CCC) is not a decision-making body and performs an advisory role only.
- ***Establishment of the Committee (pg 3)***: that flexibility is required in the establishment of CCCs including at what point the CCC is established and that some CCCs may have a defined life and could be dissolved after a particular stage of the project is complete or if the CCC decides there is little benefit in continuing the operations of the CCC.
- ***Members of the Committee (pg 3-4)***: that the Company is responsible for nominating an appropriate Independent Chairperson to the Department. The selection criteria proposed for the role of Independent Chairperson are appropriate.

### **Points for Clarification/Inclusion**

NSW Ports requests that the following items are considered for clarification and or amendment:

- ***Purpose of the Committee (pg 2)***: the use of the word "Company" may not be broad enough to sufficiently allow representation of the relevant parties involved, such as the tenants of an operational facility that is the subject of a Project Approval where that Approval is held by another body such as the landowner/landlord.
- ***Members of the Committee (pg 3)***: what happens in the event that the requirement for three to five community representatives cannot be met, even with the Company providing adequate opportunity and advertising procedures? The Guidelines should allow discretion for Committee's to proceed with fewer community representatives if reasonable endeavours have failed to obtain the minimum. Similarly the Guidelines should allow for more than five community representatives with the agreement of the Company where there is considerable community interest in the project.
- ***Members of the Committee (pg 4)***: how is the Department proposing that the Independent Chairperson will report annually to the Department? What form/content is this report expected to take? The Department receives copies of the minutes of the CCC meetings – it is unclear why an annual report is required or what this report should address. Suggest that reporting back to the Department is done on an as-required basis, either requested from the Department in response to an item from the minutes or offered up by the Independent Chairperson where they need to inform the Department of important information or seek their input.

- **Committee Meetings (pg 6):** An additional sub-section should be included regarding Terms of Reference for CCCs. The guideline should make provision for CCCs to agree on terms of reference that are generally consistent with any applicable SEARs, conditions of approval and the guidelines.
- **Committee Meetings (pg 6):** NSW Ports supports the concept of a region based CCC, and we believe this should also be extended to a whole-of-site or precinct basis such as a Port. Project specific CCC's should be allowed, with the Department's approval, to be combined with other existing consultation forums that may or may not be related to a specific development. For example, a port tenant undertaking a state significant project may elect to establish a project-specific CCC during construction and early phase of operations before reverting to a whole of port committee at a later stage once the project-specific CCC is no longer required.

### **Points of Objection and Requested Amendments**

Overall, NSW Ports believes that the draft Guidelines are not flexible enough to recognise and reflect the wide range of projects, issues and procedures that are associated with the requirement for a CCC. Some parts of the document are too stringent and unrealistic in their application. NSW Ports opposes the following items in their current wording and proposes amendments as follows:

- **Members of the Committee (pg 3):** *"State Government agencies will not be represented on the Committee".*  
NSW Ports strongly believes that appropriate State Government agencies should be represented at CCC. In many cases community members request the involvement of government agencies who have a role to play in responding to issues raised at meetings. The role of government agencies should not be restricted to attending particular meetings to invitations. There should be greater flexibility in this item to allow state government representative(s) to sit on the CCC where it is appropriate.
- **Members of the Committee (pg 3):** *"The Company must provide at least two options for the role of Independent Chairperson".*  
NSW Ports believes that the Department's role is to either approve or reject a nomination for Chairperson made by the Company according to whether they meet the established criteria. The Department is not in the best position to compare the credentials of multiple nominees and take responsibility for deciding who is the best person to fulfil the role. Such a process would impose an additional administrative burden on the Company and on the Department and would leave the Department open to accusations of incompetence or bias. One nomination of an appropriate candidate that fulfils the criteria should suffice.
- **Members of the Committee (pg 4):** *"...the Secretary of the Department...will consider these nominations and... seek additional nominees or appoint an alternative person as the Independent Chairperson."*  
NSW Ports believes it is inappropriate for the Department to seek and/or make other

appointments for the reasons outlined above. Nominations should be put forward by the Company to the Department for approval.

- **Members of the Committee (pg 4):** *“In selecting the Independent Chairperson, preference will be given to a candidate who can manage and represent the concerns of a variety of interest groups.”*

This sentence requires amendment or deletion – a candidate should be selected on the basis of his/her skills and experience rather than whom they represent. The purpose of an independent Chairperson is that they do not represent any interested party and therefore are to play an unbiased role as the Chairperson of the Committee.

- **Members of the Committee (pg 5):** *“The Secretary will.... appoint the community representatives and formally notify the successful appointees”.*

NSW Ports believes that the Department is not sufficiently resourced to commit to this in a timely manner. All interaction for community nominees should be done through the Independent Chairperson, including the submission of the nomination. It would be more appropriate for the Independent Chairperson to advise nominees of their appointment.

- **Committee Meetings (pg 6):** *“The Independent Chairperson shall determine the agenda items and produce the agenda for each meeting”.*

This responsibility should not sit solely with the Chairperson – the agenda should be determined in consultation with the Company which has a greater understanding of the project status and matters arising which may be of interest to the committee.

- **Committee Meetings (pg 7):** *“...a copy of the draft minutes is made available on the Company’s website within 28 days of each meeting.”*

NSW Ports objects to the requirement to publish draft minutes before they have been reviewed and agreed by the Committee. This requirement is likely to give rise to unnecessary confusion and controversy in circumstances where the Committee requires amendments to the draft minutes to more accurately reflect outcomes of the meeting. Only final agreed versions of minutes should be made available to the general public via the Company’s website. The Guidelines should include the flexibility for CCCs to review and agree to the draft minutes out of session within the 28 day timeframe so that final minutes can be posted to the website and sent to the Department where required. The final minutes can be formally endorsed at the next meeting but amendments and agreement on the meeting minutes should be done well before this timeframe.

- **Committee Meetings (pg 8):** NSW Ports is concerned that the section on Committee Training could create unrealistic expectations among community representatives. The Guidelines should emphasise the responsibility of the Company to provide information to the Committee in a manner that is clearly explained and readily understandable for a non-specialist. The topics suggested for coverage in the induction package are very broad and beyond the scope of what would normally be expected of an induction process. Appropriate points to be covered in the induction would include: the purpose and Terms of Reference for the Committee, responsibilities of members and an overview of the Company’s development, operations and environmental management obligations and practices. The

requirement for the Company to “support any reasonable requests from the Committee for... training” may lead to conflict with community representatives as to what constitutes a reasonable training request. Training for Committee members should be at the Company’s discretion acknowledging that it is in the Company’s interest to ensure that the Committee is well equipped to perform its role. The Independent Chairperson should have the necessary skills to perform the role without requiring additional training in matters such as facilitation, mediation or conflict resolution.

- **Responsibilities of the Company (pg 8):** “The Company shall also provide the Committee with copies of: monitoring results, annual review reports, audit reports.”

The Guidelines should not impose requirements for provision of information that may be inconsistent with the obligations set out in the Conditions of Approval to make certain documentation publically available. There needs to be more flexibility for this requirement as it may not be appropriate to supply printed copies of all reports to all Committee members. Currently, Committee members are either directed to website links when information is posted that is required to be made publically available, or summaries of items such as audits reports are either provided verbally or in presentation form to the Committee. Both of these methods work well to provide the relevant information required without overwhelming committee members with documentation, as well as saving on resource usage.

- **Responsibilities of the Company (pg 8-9):** “Annual review reports, audit reports, monitoring reports and so on are to be distributed to the Committee members at the same time as they are submitted to agencies.”

It is not the role of the Committee to act as a quasi-regulator and review documents which are currently under assessment by Government agencies. These documents should be distributed to Committee members upon acceptance/approval by the relevant agencies. Summaries or discussions regarding the documents can be made during meetings but final copies should only be made available once approved to prevent confusion regarding document versions and allow agencies to undertake their appointed roles in an objective manner.

- **Responsibilities of the Company (pg 9):** “The Company shall consult with the Committee prior to seeking approval or a modification to its condition of consent.”

The proposed blanket requirement for prior consultation regarding all applications for approvals and modifications represents a significant burden to the timely and efficient delivery of development in NSW. The Guidelines should not impose requirements for consultation which may be inconsistent with Secretary’s Environmental Assessment Requirements (SEARs) or Conditions of Approval. New approval applications and requests for significant modifications to approvals will generally be placed on public exhibition allowing time for consultation with interested parties including Committee members. In some circumstances approvals and modifications are required urgently such that it is not practicable to consult with the Committee prior to lodging a request. NSW Ports strongly objects to this proposed consultation requirement.

- **Responsibilities of the Company (pg 9):** *“The Company shall forward to each Committee member within 28 days of the Committee meeting, the Company’s response to any questions or advice by the Committee.”*

The Draft Guidelines should not specify a timeframe for response. Rather the proposed timeframe for response should be agreed upon by the Committee during the meeting when the issue was raised with an action, responsible person and date to be recorded in the minutes.

- **Responsibilities of the Company (pg 9):** *“The Company shall accommodate any reasonable requests....to undertake additional inspections provided at least 48 hours notice has been given.”*

The proposed requirement to allow ad hoc inspections at short notice is not consistent with the role of the Committee as an advisory body. This sentence should be deleted.

- **Communication with the broader community (pg 9):** *“If appropriate, the Independent Chairperson for the Committee may also give briefings to community organisations.....”*

The Chairperson should be required to give the Company at least 1 week’s notice prior to any external communication regarding a project. Representatives of the Company should be allowed to attend any third-party briefings or meetings which the Chairperson may attend in relation to the project so they can provide information directly and answer questions of relevance.