

## **SUBMISSION**

NSW Department of Planning and  
Environment

Draft Community Consultative  
Committee Guidelines for State  
Significant Projects

**NSW MINERALS COUNCIL**

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## Executive Summary

The NSW Minerals Council (NSWMC) welcomes the development of the draft *Community Consultative Committee Guidelines for State Significant Projects* (Guidelines), which provides guidance on the scope, establishment and operation of Community Consultative Committees (CCCs).

The Department of Planning and Environment's (DPE's) updated draft Guidelines included some positive aspects including greater clarity on a number of procedural matters as well as introducing a code of conduct for CCC members. However the mining industry has serious concerns that the guidelines take CCCs toward an inappropriate quasi-regulatory role. In addition there are a number of changes that could be made to the Guidelines that will improve the operation of CCCs.

The mining industry's major concerns with the Guidelines are:

- They unnecessarily expand the role of CCCs to infer a quasi-regulatory role.
- They impose unnecessary and potentially onerous demands on companies. For example, requiring the provision of a wide array of monitoring and other data that would require significant revision to ensure that it is appropriate for a general public audience.
- Specific environmental representation is unnecessary and should specifically exclude known activist groups.
- They unnecessarily and inappropriately enable funding and remuneration of CCC members.
- They unnecessarily enable committee training to be undertaken.
- It is unclear whether the Guidelines are to be applied retrospectively; nevertheless it should be at the company's discretion whether or not to transition its project or CCC to the updated Guidelines.
- There is a lack of clarity or a need for further refinement on various areas of guidance relating to the operation and establishment of CCCs.

The NSW Minerals Council looks forward to discussing the various aspects of this submission with DPE to assist with the development of workable CCC Guidelines.

# 1. Introduction

## 1.1. About the NSW Minerals Council

The NSW Minerals Council (NSWMC) is the peak industry association representing the NSW minerals industry. Our membership includes approximately 80 members, ranging from junior exploration companies to international mining companies, as well as associated service providers.

## 1.2. Background

Mining companies are required to establish Community Consultative Committees (CCCs) as part of the conditions of consent for its projects. The revised draft *Community Consultative Committee Guidelines for State Significant Projects* (Guidelines) provides further guidance on the scope, establishment and operation of CCCs.

The Department of Planning and Environment's (DPE's) updated draft Guidelines included some positive aspects including greater clarity on a number of procedural matters as well as introducing a code of conduct for CCC members. However the mining industry has serious concerns that the Guidelines take CCCs toward an inappropriate quasi-regulatory role. In addition there are a number of additional changes that could be made to the Guidelines that will improve the operation of CCCs. This is discussed in the following section – these important changes will ensure the final Guidelines are fit for purpose.

# 2. Key issues

## 2.1. The Guidelines unnecessarily expand the role of CCCs to infer a quasi-regulatory role

The Guidelines state that CCCs are a forum for open discussion on issues relating to a project and to keep the community informed of these matters. They also state that CCCs are not a decision-making body and perform an advisory role only. However, the language used and scope described in the Guidelines implies a quasi-regulatory and/or official role for CCCs that exceeds its advisory-only function. There are numerous examples of this throughout the document, however of most concern are the following:

- The CCC should not have a role in the pre-approval or pre-application phases. Firstly, “commenting on assessment documentation”<sup>1</sup> is not necessary for a CCC as this duplicates the existing approvals process. Secondly, involvement in the pre-application phase is unworkable because projects are often confidential (as they have commercial/shareholder effects and implications) and often not announced until an application is submitted. Informing only certain community members of the existence of a project could create angst in a community about a project before the company is ready to discuss it.
- The CCC should not have a role in the “review of the performance of the project”<sup>2</sup> or “review [of] draft management plans and provid[ing] suggestions for improvement.”<sup>3</sup> This is the role of regulators and duplicates their role. Further, draft documents should not be made public (i.e. provided to a CCC) until they are finalised.
- The CCC should not have a role in the review of a company's complaints handling procedures, nor the handling of any particular concerns or complaints<sup>4</sup> as this is a company

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<sup>1</sup> NSW Department of Planning and Environment 2016, ‘Draft Community Consultative Guidelines’, p. 2.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid. p. 3.

<sup>4</sup> Ibid.

responsibility. A CCC can be made aware of the process, but should not have a role in reviewing these, as this is the responsibility of an auditor or regulator.

- Annual review reports, audit reports, monitoring reports etc. should not need to be distributed to the CCC at the same time that they are submitted to government agencies.<sup>5</sup> These should only be provided once finalised following review and approval by the relevant agencies.
- A company should not be required to consult with the Committee prior to seeking approval for a modification to its conditions of consent, to change operational requirements or to expand its operations.<sup>6</sup> These are commercial decisions and should not be subject to consultation with the CCC as it has no decision-making authority. Companies are required to make these business decisions at short notice – it would be impractical and costly for a company to be required to wait for the next scheduled CCC meeting (that could be three to twelve months away) before it has another opportunity to showcase a finalised modification application to it.
- The use of language such as “inspections”<sup>7</sup> 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.<sup>8</sup> 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”<sup>9</sup> as training a CCC implies that its members need to be equipped to regulate a project.

Instead, the Guidelines should, throughout the document, more clearly outline the scope and objectives of a CCC to reflect its intent as stated in the ‘Purpose of the Committee’ section, namely to keep a community and key stakeholders informed of issues relating to a project and provide a forum for open discussion and avenue to provide feedback on these issues.

### Recommendation

- Review the Guidelines to remove any implied or express suggestion of any quasi-regulatory role for CCCs.
- Remove the possibility of CCCs being established pre-application.
- Throughout the document, limit the scope of a CCC to its intent, that is, to keep a community and key stakeholders informed of issues relating to a project and provide a forum for open discussion and avenue to provide feedback on these issues.

## 2.2. The Guidelines impose unnecessary and onerous demands on companies

The quasi-regulatory role for the CCC discussed in Section 2.1 inadvertently imposes additional and unnecessary 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 to these documents. In effect, companies will be required to engage with another ‘quasi-regulatory’ body in relation to their projects. This unnecessarily duplicates existing approval and

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<sup>5</sup> Ibid. pp. 8-9.

<sup>6</sup> Ibid. p. 9.

<sup>7</sup> Ibid. p. 3.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid. p. 9.

regulatory processes, and goes against the government's intent of streamlining regulatory requirements.

The additional reporting/information supply requirements create an unnecessary burden on company representatives, adding to existing cost and time pressures.

In addition, some of the requested information may be potentially confidential or have safety implications, and not be intended for public release (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 only be the preserve of government / union inspectors or regulators (or their representatives).

### **Recommendations**

- The guidelines should 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 two, unless the company agrees to more. At least two weeks' notice should be provided to the company prior to any requested site visit.

### **2.3. 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. If the purpose of CCCs is to provide 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.

Alternatively, any environmental representatives should reside in the relevant local government area(s) and not be from or linked to known environmental activist groups that illegally access or disrupt mining operations – since their interests are unlikely to represent the genuine interests of the local community. The Guidelines also need to clarify what constitutes a 'recognised environmental group' and how a representative is authorised to speak and act on behalf of that group.

### **Recommendation**

- Remove specific CCC membership selection criteria for environmental representatives.
- Alternatively, ensure that any environmental representatives are from the relevant local government area and are not from or linked to known environmental activist groups. Guidance should also need to be provided on what constitutes a 'recognised environmental group' and how its representative is authorised to represent it.

## 2.4. It is inappropriate for funding and remuneration of CCC members to be a company responsibility

The Guidelines set an unnecessary and inappropriate 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 awkward position in denying payments, when their intent is to maintain constructive 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. As a minimum it creates the clear potential for a perceived or actual conflict of interest to arise.

Additionally, the workload and responsibilities of the Independent Chairperson have increased substantially in the updated Guidelines. This is likely to increase their fees considerably. It is important that the Independent Chairs are local and their workload is minimised wherever possible to avoid the need for paid professional chairpersons.

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

### Recommendation

- Any funding or remuneration of CCC members or Chairs should be minimised and at the expense of the Department of Planning and Environment.

## 2.5. 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 on their 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. Providing training for 'best practice' environmental management and community relations sets an unreasonable expectation that these should always be implemented – 'best practice' isn't always definable, relevant or feasible. Environmental management and community relations results should be outcomes focussed, and not necessarily 'best practice'. Further, community members are not expected to be specialists in either of these fields, which are specialities in their own right.

If Committee training is to remain within the scope of the Guidelines, it should not be at the expense of a company.

### Recommendation

- Remove Committee training from the Guidelines.

## 2.6. Further refinement and guidance for CCC operation and governance is necessary

The Guidelines require further refinement and/or guidance on a number of governance related situations that CCCs 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; who can nominate them (preferably the Chair and/or DPE, rather than the member that cannot attend) and within what period prior to a meeting).

- The 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 members ongoing contribution to the community and their participation in the previous term (based on the advice of the Independent Chair).
- CCC members should not be allowed to sit on several Committees across multiple local government areas (LGAs), unless they are considered to be a genuine local within more than one LGA.
- A definition for the 'local area' should be provided, which from the mining industry's perspective should be the local LGA.
- There should be no restriction to the maximum number of company representatives on a CCC. Additional representatives could be required to provide technical, specialist or administrative support, and requiring the Chair's approval is impractical, so shouldn't be required.

Further, in undertaking consultation with a CCC, there is a lack of clarity around what constitutes adequate consultation.

### **Recommendations**

- Refine or provide further guidance on governance related issues, including:
  - Requirements for alternative representatives.
  - Term of CCC members and Chair.
  - Scope of eligibility for multiple CCC membership by any individual.
  - Defining the local area of a project.
  - Not limiting company representation on CCCs.
- Provide a definition / guidance throughout the document, of what constitutes adequate consultation to enable compliance with the Guidelines.

### **2.7. The Guidelines should not be applied retrospectively to existing projects or CCCs**

The transitional arrangement for existing CCCs are not clear as to whether they are required to adhere to these Guidelines. As a general position, NSWMC opposes retrospective application of legislative or policy changes. In this case, the NSWMC recommends that the Guideline not be applied retrospectively but that companies have the discretion to adopt the new Guidelines should they wish to do so.

### **Recommendation**

- Do not apply these Guidelines to existing projects or CCCs retrospectively. Clarify that, for existing projects / CCCs it is at the discretion of the company as to whether the new Guidelines are to be adopted.

### **3. Further detailed feedback and recommendations**

Additional detailed feedback and recommendations on the Guidelines is provided in the attached document.