ENVIRONMENTAL IMPACT ASSESSMENT IMPROVEMENT PROJECT
NSWMC SUBMISSION

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NSW MINERALS COUNCIL
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Executive Summary

The NSW Department of Planning and Environment (DPE) is undertaking an ambitious project aimed at improving the overall Environmental Impact Assessment (EIA) process through the EIA Improvement Project (the project). While the NSW mining industry is largely supportive of the stated aims of the project there are significant concerns that the process proposed to be introduced by the project will not deliver these benefits. In fact the process set out in Guidelines 1 – 9 could result in longer assessment timeframes, without any commensurate benefit in terms of public participation or clearer assessment for decision makers.

The Guidelines provide an opportunity to provide greater clarity for community, proponents, government and the decision makers. The draft Guidelines are yet to achieve this balance and there are a number of opportunities noted in this submission to provide clarity about the expectations placed on DPE and other government agencies in the process. While the decision maker has the potential to introduce delay in the assessment at a late stage by identifying new issues for assessment, the Guidelines do little to address this issue.

The Guidelines will provide a good resource for the community, but it is important that the expectations of the EIA process and the changes that consultation and engagement might be able to deliver are realistic and achievable.

The NSW Minerals Council (NSWMC) is supportive of many aspects of the proposed EIA process outlined in the Guidelines. There are improvements and much needed clarification. However those elements where there is the most significant change, Guideline 3 – Scoping and Environmental Impact Statement and Guideline 6 – Community and Stakeholder Engagement, have potential to significantly increase overall assessment timeframes, as well as the risk of decisions being subject to administrative appeals, without significantly narrowing the scope of an assessment to the important issues, or increasing the community’s confidence in assessment.

For NSWMC members the significant issues that need to be addressed by the EIA Improvement Project are:

- Issues being identified for assessment post the lodgement of the Environmental Impact Statement (EIS). This leads to further assessment (referred to in this submission as ‘incremental assessment’) rather than assessing all issues concurrently during the preparation of the EIS. The key drivers of this incremental assessment are:
  - Community expectations for assessment of issues that are not material and accordingly have not been included in the Secretary’s Environmental Assessment Requirements (SEARs) and not addressed in the EIS, being raised post EIS lodgement and being required to be assessed
  - The delegate of the Minister as consent authority for most mining projects, the Planning Assessment Commission (PAC) raising issues post lodgement of the EIS which have not been determined to be material and therefore have not been included in the SEARs
  - Government agencies being unclear on their assessment requirements at the SEARs stage and seeking to reopen and re-prosecute the issues of what should be assessed during the preparation of the EIS and through their submissions on the project.

- Being required to assess issues that are not material to the project and in some circumstances being conditioned with respect to those immaterial concerns.

- Peer review being undertaken in a manner that is not timely and multiple peer reviews being undertaken with limited additional benefit to the decision maker and the community.

- Unrealistic expectations about the level of influence that the community can expect to have on a mining project given that:
- The location of the resource is fixed
- It is necessary to define the project before the scoping process as a proponent is not going to present a project for assessment before there is a high level of confidence that the project is both approvable and financially viable.

In discussions with DPE it is acknowledged that the Guidelines are designed to bring consistency to current EIA practice which differs across and within industry sectors. It is important that DPE ensure that this message is clear in the Guidelines and in their discussions with the community. Without this there is a danger that expectations will be raised that there will be a significant change in practice for operations that are already achieving high levels of EIA practice. Importantly in terms of community consultation and engagement there needs to be considerable revision of Guideline 6 – Community and Stakeholder Engagement to ensure that expectations of the level of change that can be made to a project is generally limited in mining projects where the resource is fixed.

While the guidelines focus largely on the EIA practice of proponents, this project also provides an opportunity to improve government practice in the EIA process. In particular there are considerable gains to be made by bringing efficiency to the interaction of other agencies (apart from DPE) with the approvals process. This includes in the setting of SEARs, considering the adequacy of the Environmental Impact Statement and submissions.

These guidelines, as well as the draft post approval guidelines and draft social impact assessment guidelines are going to require additional resourcing, not just for DPE, but also for the other agencies that interact with development. This improvement process will not be successful if there are insufficient resources on the ground to implement the changes.

The NSW mining industry has seen similar objectives from government in previous regulatory policy initiatives including Part 3A. It is important that when this project is implemented it is properly monitored to assess whether it is effective.
Recommendations

1. Prior to the implementation of the EIA Project, DPE should develop a plan in consultation with stakeholders:
   • To measure the success of the project in delivering the proposed benefits
   • To respond to any lack of success of the project and unintended consequences

2. Greater clarity should be provided around the stakeholders that need to be consulted during scoping engagement.

3. A note should be added to section 3.2.2 of Guideline 2 that acknowledges that government agencies will be consulted separately outside of the community engagement process.

4. Guideline 2 should include case studies of projects where the DPE considers proponents have undertaken a suitable level of community engagement so that proponents and the community understand the DPE’s expectations.

5. Guideline 2 should specifically state that as community participation during scoping will occur at an early stage in the assessment process and prior to technical studies being conducted (or completed), it would be unreasonable for the community to expect all of the detail of a project to be known at this stage.

6. Guideline 2 should specifically state that it may be the case that certain issues identified by members of the community are not appropriate for further consideration and assessment by the proponent.

7. In section 3.4.3 of Guideline 2, “and how they will engage with the community during subsequent phase to explain the reasons” should be deleted.

8. The preparation of a CSEP needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt over time.

9. In section 5.1.1.1 of Guideline 2, the Guideline should be more specific as to who ‘relevant affected community members’ are and how they will be identified.

10. There is no need for DPE to hold ‘briefing sessions’ during the exhibition period of an EIS.

11. If DPE believe it will be beneficial to the community to provide a briefing in the EIA process, it should do so by working in partnership with the proponent.

12. Footnote 8 in Guideline 2 should be deleted.

13. Section 6.1.1 of Guideline 2 should be updated to reflect current practice whereby DPE provides recommended conditions of consent to the PAC.

14. In section 6.2.1 of Guideline 2 the following dot point should be deleted:
   • the proponent will inform the community of the Department’s determination in accordance with any requirement in the consent and advise them of the location of the consent documents and any next steps.

15. NSWMC provided a submission in the Scoping Worksheet in 2016. No changes have been made to the scooping worksheet and DPE should re-consider NSWMC’s 2016 submission.

16. The Guideline should provide that proponents can elect to use either the Scoping Worksheet of an approved risk assessment methodology to inform the development of a scoping report
17. In the event that DPE does not provide for proponents to elect to use a risk assessment instead of a Scoping Worksheet, DPE need to prepare industry specific scoping worksheets.

18. DPE should develop draft SEARs.

19. During the scoping process the proponent should identify the proposed SEARs for the project and the scoping report should justify any departure from the Standard SEARs by reference to the scoping report or risk assessment undertaken.

20. The period for the issuing of SEARs from the request for SEARs should be extended to 42 days.

21. Upon a request for SEARs the Government (DPE and other relevant agencies) should consider the proponent’s scoping report and request for SEARs and prepare draft SEARs within 14 days.

22. The draft SEARs should be publicly exhibited for 14 days.

23. The SEARs should be issued 14 days after the close of the public exhibition period.

24. The definition of “community and stakeholders” needs to be responsive to the project. The definition contained in Guideline 6 – Community and Stakeholder Engagement, and carried through to other Guidelines including Guideline 3, is too broad (see also Recommendation 52) and creates the risk that the community and stakeholders identified by DPE and the proponent at the scoping meeting could be the cause for a later challenge to an approval.

25. Detailed guidelines about consultation at all stages of the pre-lodgement and EIA phases of the project approval should be contained in Guideline 6 – Community and Stakeholder Engagement. Guideline 3 – Scoping an Environmental Impact Statement, should only include a brief description of the purpose of the scoping engagement.

26. Guideline 6 should define what is sought from the community in the scoping process:
   a. What issues are of importance to the community and
   b. What are the community’s views on the proposed approach to assessment.

27. NSWMC provided a submission on the scoping worksheet in 2016. No changes have been made to the scoping worksheet and DPE should re-consider NSWMC’s 2016 submission.

28. The Guideline should provide that proponents can elect to use either the scoping worksheet or an approved risk assessment methodology to inform the development of a scoping report.

29. In the event that DPE does not provide for proponents to elect to use a risk assessment instead of a scoping worksheet, DPE need to prepare industry specific scoping worksheets.

30. Reconsider and delete or amend the examples of additional work to be done in response to community concerns provided at section 7 of Guideline 3.

31. Include details of the exhibition process in Guideline 3, including:
   a. Where will the document be available for review?
   b. How will the notification period be advertised and who is responsible for the advertising?
   c. Are there any costs associated with the exhibition process?

32. Guideline 3 should provide criteria to determine when an extension to an existing mine will require:
   a. SEARs
   b. Public exhibition.
33. DPE should not ask specific questions on the scope of the EIS during public exhibition. The draft SEARs should be exhibited and the public should be asked to comment on whether the SEARs are appropriate.

34. DPE should be the lead agency for development assessment and should be empowered to resolve issues about the assessment of projects and ensure that the SEARs are the whole of NSWW government requirements for the assessment of a project, as well as the Commonwealth’s assessment requirements.

35. The SEARs must be the assessment requirements for a project. The practice of appending agency correspondence to the SEARs should cease.

36. Guideline 3 should provide guidance to DPE and other government agencies on when it is appropriate to amend the SEARs and the process for making the amendment.

37. DPE need to consider how to ensure that any delegate of the Minister is satisfied with the SEARs before the finalisation of the EIS.

38. DPE should publish the register of meetings with the proponent at the same time as the Scoping Report is exhibited.

39. Guideline 4 should provide that a list of commitments and mitigation measures should be included in the appendices of the EIS and referenced in the project description.

40. Guideline 4 should state clearly that the requirement for a ‘project description’ chapter in the EIS will only apply to new SSD projects and subsequent modifications of those projects, not modifications of projects approved at the time of the introduction of Guideline 4.

41. DPE should provide much more detailed guidance on the level of assessment required when utilising the maximum parameters approach. This detailed guidance should include specific examples/case studies of SSD projects including mining development where DPE will accept this approach to assessment. This detailed guidance and the case studies should be provided to stakeholders during the consultation on the EIA Improvement Project.

42. Improve the clarity of section 3.7.2 by making the following amendments:
   a. However, there may be circumstances where particular elements of a project require further design at the time of finalising the EIS during the undertaking of the project or latter stages of the Assessment process.
   b. This will give confidence that the Project, as constructed and operated, is within the parameters and impacts assessed in the EIS and approved through the conditions of consent.

43. Clarify what is meant by ‘The Summary should include a section indicating the current phase and future phases in the EIA’ in section 3.5 – Executive Summary.

44. Include a requirement of a brief description of the project context such as locality and general description of the surrounding environment in section 3.6.3 – Project History.

45. Include the alternatives and project justification (section 3.6.4) straight after the project description section.

46. Make the following changes to Guideline 4:
   a. Bullet points 4 and 5 on page 17 should be amended as follows:

   **Bullet point 4** — “an evaluation and weighing up of the main social, economic and environmental impacts (costs and benefits) associated with the project”

   **Bullet Point 5** “whether on balance, the impacts and benefits of the proposal favour an evaluation of other impacts relevant to the public interest.”
b. Increase the limit for online lodgement size of files to reflect the common size of EIS files.

c. Amend section 3.10.2 so that it does not refer to “specialist author” as the other issues assessment does not have a specialist author.

d. The discussion of the identification of changes in section 3.7.3 should reference the Response to Submissions.

47. Section 3.2 of the Guideline 5 should be amended to make it clear that DPE is only required to exhibit an amended application and accompanying submissions report if the amended development application ‘substantially differs from the original application and the environmental impact has not been reduced’.

48. Guideline 5 should clearly state that submissions by government agencies are to be consistent with NSW Government policy.

49. Guideline 5 should include an express requirement for DPE to request any further information from the proponent as soon as possible after any issues have been identified.

50. Guideline 5 should provide where agencies should be able to provide a response to the proponent’s response to submissions. A response by an agency will only be permissible to address issues that the particular agency considers have not been adequately addressed in the Submissions Report, and should not be used as an opportunity to reiterate or repeat matters that have already been raised in previous submissions.

51. A formal process of considering the adequacy of the EIS before the exhibition should be reintroduced.

52. DPE should review the way formatting and publication of submissions on the DPE website occurs.

53. DPE should not accept submissions after the close of the public exhibition period.

54. Guideline 6 should rely on the processes of selection of stakeholders already published in the Draft SIA Guideline (December 2016) and include processes that reflect a distinction between affected and interested parties.

55. Table 2 and Table 4 of Guideline 6 should be deleted. Alternatively, Table 2 in Guideline 6 should be restructured such that brownfield mining projects where the scope of controversial issues is already known do not automatically trigger high ratings in the evaluation scale.

56. Specific detail should be added into Table 2 in Guideline 6 of situations that would reduce a high rating.

57. Table 2 of Guideline 6 should take into account whether the community is aware of the mining industry as this will impact on the level of knowledge they already have. The community’s feedback on how they want to be engaged should also be taken into account.

58. At point 9 of Table 2 in Guideline 6 the following should be deleted: “For example, interest from Aboriginal groups would usually be classed as high or very high.”

59. Table 4 of Guideline 6 should be deleted. Alternatively, if Table 4 is not deleted it should be amended so that it refers to ‘examples of participation’ that a proponent may consider (rather than minimum engagement requirements) and encourage proponents to tailor outcomes for their specific project based on the issues raised by the community and other stakeholders.

60. If table 4 of Guideline 6 is retained, the following amendments should be made to the ‘Participation outcomes to be achieved’:

   a. Outcome 2 and Outcome 6 in Table 4 of Guideline 6 make reference to “possible alternatives”. This should be “feasible alternatives”.
b. Table 4 of Guideline 6 should be worded such that it sets realistic expectations for the community and other stakeholders on the level of participation and influence they have.

c. Outcome 7 in Table 4 of Guideline 6 requires informing the community and other stakeholders about the cumulative impacts and other concerns. Inclusion of positive impacts should also be included.

d. Outcome 9 in Table 4 of Guideline 6 should be deleted.

61. The Guidelines, including Guideline 6, need to acknowledge that the nature of some projects, and particularly mining project modifications, will drive the need for ‘fit for purpose’ project and context specific approaches to both community and stakeholder engagement and EIA processes.

62. At dot point 3 of section 4.3 in Guideline 6 should be amended to require the proponent to identify the objectives of engagement undertaken and how these are measured.

63. In section 4.2 of Guideline 6 the requirement to publish the following within 28 days of SEARs being issued should be deleted:
   a. the outcomes from participation of the community and other stakeholders that have been accepted from the Scoping Report and referenced in the SEARs;
   b. all available project information that is public at that time.

64. In respect of the reference in Guideline 6 to publishing “the engagement activities the community and other stakeholders can participate in, when these activities will occur and how they can find out more information or participate” this needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt over time as a greater understanding of the community is developed.

65. Appendix A in Guideline 6 on Guidance on the Community and Stakeholder Engagement Plan should be simplified and made less complicated.

66. Reference to DPE conducting briefing sessions during the exhibitions period of an EIS should be deleted.

67. Guideline 6 should clearly support the integrated assessment of environmental and social aspects to the same extent that the Draft SIA Guideline does.

68. Guideline 7 should include a further type of condition: ‘measures based conditions’, which would cover conditions where the proponent is required to implement all reasonable and feasible measures to achieve certain environmental outcomes.

69. Guideline 7 should direct other agencies to provide conditions that relate only to the particular issues that fall within the agency’s statutory responsibility and are appropriately conditioned rather than dealt with by another form of approval.

70. Guideline 7 should not apply to modifications of consents that exist at the time of the commencement of the Guideline, unless the proponent elects to ‘opt in’.

71. DPE should consult with industry on the draft model conditions.

72. Amend section 2.1 of Guideline 7 to reflect current practice with regard to the DPE assessment report where the decision maker is the PAC – i.e. the report states whether the project is approvable, and if so on what conditions.

73. Remove the note at the end of section 5.5.1of Guideline 7.

74. Clarify how impacts drive particular conditions in Figure 3 in Guideline 7.
75. Guideline 7 should state that where there is a general outcome based condition that subordinate conditions that direct how those outcomes are to be achieved should be minimised.

76. Section 3.1 of Guideline 8 should provide a greater level of guidance to assist proponents to identify where a change will be within the terms of an approval.

77. Guideline 8 needs to be amended to provide greater clarity around the purpose the Environmental Report and Environmental Assessment in a Type 3 Modification application.

78. Guideline 8 should provide an indication of the types of modification applications that will require the issuing of SEARs.

79. Guideline 9 should set out the objectives of peer review and these should define the engagement of the peer review.

80. Guideline 9 should make it clear that there is a presumption in favour of identifying peer review at the SEARs stage and no later than a new proposed adequacy stage.

81. Guideline 9 should:
   a. State explicitly that where DPE or an agency commission a peer review, the time to undertake the review is time in government hands.

82. DPE as the lead agency for development assessment should consult with the PAC to develop a protocol on the commissioning of peer reviews that aims to reduce duplication of peer reviews by the government/delegated decision maker.

83. Section 2.3.1 of Guideline 9 should identify as a conflict working concurrently on a project which might have cumulative impacts with the peer reviewed project.

84. Section 2.3.3 of Guideline 9 should refer to the overall intent of the peer review.
1 Measuring success and responding to outcomes

While the NSW mining industry is reluctant to request still more regulatory policy changes, it does not make sense to implement the EIA project and persist with the changes if the proposed benefits do not materialise and if in fact there are negative impacts.

DPE should measure the success of the project against the proposed benefits of the project that are set out in section 1.2 of Guideline 2.

Prior to implementation DPE should set key performance indicators for each of the proposed benefits in order to measure the success of the implementation of the project.

DPE should also set out what should happen in the event that the implementation does not deliver the benefits that are proposed in Guideline 2. In particular the plan for measuring success and responding to outcomes of the project should identify unintended consequences, such as the scoping process leading to significant increased in the overall time taken to complete the pre-lodgement and EIA.

DPE should prepare a plan to measure success of the project and response to the outcomes of the project including timeframes in consultation with stakeholders before implementing the EIA project.

Recommendation

1. Prior to the implementation of the EIA Project, DPE should develop a plan in consultation with stakeholders:
   • To measure the success of the project in delivering the proposed benefits
   • To respond to any lack of success of the project and unintended consequences
2 Guideline 2 – Community Guide to EIA

The NSW mining industry welcomes the development of Guideline 2 – Community Guide to EIA. The development of this guideline will be a positive for both the community and proponents and will provide a good tool to assist in engagement of the community around the assessment process.

Given the potential of Guideline 2 in the consultation process, it is important that it provides the community with appropriate expectations of the EIA process.

2.1 Scoping engagement with the community

Section 3.2.2 of Guideline 2 provides that:

‘The Department is requiring all proponents of State significant projects to engage with the community and other stakeholders during the scoping phase to develop a relationship with the community early in the project…’

“Community and other stakeholders” is a defined term in the Guidelines and means:

‘All those with a stake in a Project including community members that may be impacted by, or interested in the project’

This wording potentially creates a requirement, or at least an expectation that all community members that ‘may be interested’ in the project must to be consulted. For mining projects there are a vast array of people that ‘may be interested’ in a mining project for a range of issues, ranging from direct impacts (e.g. the local community or people in proximity to haulage routes) to indirect impacts (downstream jobs created as a result of increased employment or water users concerned about potential impacts on water quality or quantity) to general concerns about mining or environmental, social or economic issues (e.g. concerns about climate change associated with the use of coal, people concerned about foreign investment, commercial competitors both national and internationally).

Fully satisfying this consultation requirement will almost certainly not be able to be achieved in practice. This wording potentially creates legal obligations which cannot be satisfied, potentially creating grounds for legal challenge throughout the approval process.

This is further discussed in the context of Guideline 6 at section 6.1 of this submission.

Arguably the way “community and other stakeholders” is defined would mean that government agencies would be included. A note should be added to section 3.2.2 of Guideline 2 that acknowledges that government agencies will be consulted separately outside of the community engagement process.

Recommendation

2. Greater clarity should be provided around the stakeholders that need to be consulted during scoping engagement.
3. A note should be added to section 3.2.2 of Guideline 2 that acknowledges that government agencies will be consulted separately outside of the community engagement process.

2.2 Community participation during scoping

Section 3.4 of Guideline 2 covers community participation during scoping. A key driver of the EIA Improvement Program is to significantly increase the level of community participation as early as possible within the scoping stage of a project. Accordingly, Guideline 2 requires a proponent to
undertake a significant level of community engagement very early in the project development phase and continually throughout the EIA process.

DPE’s expected level of community and stakeholder engagement is overly prescriptive and is likely to cause significant delays in the assessment time frame, together with potentially exposing projects to judicial review proceedings if the community allege that the Guidelines have not been precisely followed.

That being said, if DPE insists on maintaining the proposed community engagement regime as outlined in the Guidelines, then we recommend that DPE provides case studies of projects where they consider proponents have undertaken a suitable level of community engagement so that proponents and the community understand DPE’s expectations in this regard. It may be the case that despite community consultation an issue may not be resolved in the manner desired by some groups or individuals, yet the project will still progress to decision making and be approved. Explaining this in the Guidelines will aid in managing expectations of different parties. It is important that there is not an expectation set that a proponent needs to fully avoid or mitigate all impacts for a project to be approvable.

It is also important that Guideline 2 provide more guidance to the community as to what the community can reasonably expect from a proponent during the scoping stage of a project given that this stage will occur at an early stage in the assessment process and prior to technical studies being conducted (or completed). Therefore it would be unreasonable for the community to expect all of the detail of a project to be known at this stage. It may also be the case that certain issues identified by members of the community are not appropriate for further consideration and assessment by the proponent – these expectations should be managed through some clear statements in the Guidelines to this effect.

**Recommendation**

4. Guideline 2 should include case studies of projects where the DPE considers proponents have undertaken a suitable level of community engagement so that proponents and the community understand the DPE’s expectations.

5. Guideline 2 should specifically state that as community participation during scoping will occur at an early stage in the assessment process and prior to technical studies being conducted (or completed), it would be unreasonable for the community to expect all of the detail of a project to be known at this stage.

6. Guideline 2 should specifically state that it may be the case that certain issues identified by members of the community are not appropriate for further consideration and assessment by the proponent.

**2.3 Community feedback**

Section 3.4.3 of Guideline 2 requires proponents to explain in the Scoping Report why any matters are not being addressed in detail in the EIS and ‘how they will engage with the community during subsequent phases to explain the reasons’.

The Scoping Report, which is a publically available document, should be sufficient to explain why a particular issue does not require further consideration without further consultation on these matters being required.

**Recommendation**

7. In section 3.4.3 of Guideline 2, “and how they will engage with the community during
2.4 Community Stakeholder and Engagement Plan

Each proponent must prepare and publish a Community Stakeholder and Engagement Plan (CSEP) within 28 days of SEARs being issued which outlines the community engagement activities that the community can participate in during the preparation of the EIS.

The preparation of a CSEP needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt over time as the EIS is developed.

This is further discussed in the context of Guideline 6 at section 6.4 of this submission.

Recommendation
8. The preparation of a CSEP needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt over time.

2.5 Public exhibition

Section 5.1.1 of Guideline 2 indicates that ‘Relevant affected community members will be notified by the Department via letter and newspaper advertisement’. We recommend that the Guideline is more specific as to who these ‘relevant affected community members’ are or how they will be identified e.g. will it be people with a primary residence within a specified radius of the project boundary.

Recommendation
9. In section 5.1.1.1 of Guideline 2, the Guideline should be more specific as to who ‘relevant affected community members’ are and how they will be identified.

2.6 Briefing sessions during exhibition period

Section 5.1 of Guideline 2 indicates that DPE may hold ‘briefing sessions’ during the exhibition period of an EIS to explain the assessment and submission process to the community. Such meetings are unnecessary and inappropriate for the following reasons:

- The proponent may not be provided with an opportunity to participate in such meetings and even if they are in attendance, without prior knowledge of the issues to be raised, the proponent will not be adequately prepared to respond (if given the opportunity to do so). This can cause frustration to the community when the questions they have are not able to be answered.
- Given the extensive plain English guidelines that form part of the EIA Improvement Program, there should not be a further need for DPE to explain the process to the community.

If DPE believe it will be beneficial to the community to provide a briefing in the EIA process, it should do so by working in partnership with the proponent. This would ensure that the proponent could deal with issues of substance raised at any such session. If the purpose of the briefing is to explain the assessment and submission process to the community it may be more appropriate for this to be timed earlier in the process than during the exhibition period of an EIS.
Recommendation

10. There is no need for DPE to hold ‘briefing sessions’ during the exhibition period of an EIS.

11. If DPE believe it will be beneficial to the community to provide a briefing in the EIA process, it should do so by working in partnership with the proponent.

2.7 Responding to submissions

Footnote 8 in section 5.1.2 provides that DPE will also consider feedback provided on projects ‘at any phase in the EIA as part of its assessment of the project.’ This process is unfair to proponents and is not consistent with the legislation that provides for prescribed public exhibition periods and the Planning Assessment Commission public hearing and meeting processes.

Section 79C of the Environmental Planning and Assessment Act 1979 sets out the matters that a consent authority is to take into consideration in determining a development application. Section 79C(d) lists as one of the matters ‘any submissions made in accordance with this Act or the regulations’. Arguably a proponent would be able to challenge a decision made which takes other submissions into account.

Recommendation

12. Footnote 8 in Guideline 2 should be deleted.

2.8 How is a project determined?

Section 6.1.1 of Guideline 2 states that:

‘if the decision maker is the Planning Assessment Commission, the Department’s Assessment Report does not contain any recommendations so that the Commission can make an independent decision.’

This is inconsistent with current practice and would be problematic for proponents and the community alike as it is likely to lead to delays in assessment of a project and inconsistencies in conditions. This section of the guideline should be updated to reflect current practice whereby DPE provides recommended conditions of consent to the PAC.

It is also inconsistent with the first sentence in section 6 of Guideline 6 that states:

‘Following completion and lodgement of the Submission Report, the Department will undertake an assessment to inform its recommendation to the consent authority on whether or not the project should be approved.’

This is further discussed in the context of Guideline 7 at section 7.5 of this submission.

Recommendation

13. Section 6.1.1 of Guideline 2 should be updated to reflect current practice whereby DPE provides recommended conditions of consent to the PAC.

2.9 Participation during the Department’s assessment and determination

Section 6.2.1 of Guideline 2 provides that the proponent will be required to inform the community of DPE’s determination in accordance with the consent. It is sufficient that DPE will make its determination publicly available on its website once the project is determined. This creates
transparency and easy access. Any additional notification should be at the discretion of the proponent. If there are specific notification requirements for the project, these should be set out in the conditions of consent.

**Recommendation**

14. In section 6.2.1 of Guideline 2 the following dot point should be deleted:

- *the proponent will inform the community of the Department’s determination in accordance with any requirement in the consent and advise them of the location of the consent documents and any next steps.*
3  Guideline 3 – Scoping an Environmental Impact Statement

Guideline 3 sets out a new pre-lodgement process of identifying the issues to be assessed through the setting of the Secretary’s Environmental Assessment Requirements (SEARs).

NSWMC support efforts by DPE to identify the important issues for assessment at an early stage. If this can be done successfully it will:

- Prevent incremental and time consuming assessment processes when issues are identified by the community or the Planning Assessment Commission (PAC), or even other agencies after the EIS has been finalised and placed on public exhibition. This is a significant issue of mining SSD projects
- Save proponents from assessing issues that are not of significance, in the EIS, saving time and resources for proponents, the community, assessing agencies and decision makers.

However NSWMC has significant reservations about whether the framework proposed can assist in providing a more focussed assessment and prevent the assessment of issues that are of low priority or limited relevance. Section 79C of the Environmental Planning and Assessment Act 1979 (the EP&A Act), which provides the decision maker with a very broad set of evaluation criteria, make it very difficult to limit issues considered by the consent authority.

The view of NSWMC is that while proponents may initially attempt to work with the intentions of the new framework, when a project is required to assess matters that were not determined to be relevant through the scoping process as reflected in the SEARs, proponents will revert to assessing all issues, regardless of risk or priority, to save time consuming and costly incremental assessment phases.

3.1  Scoping Worksheet

3.1.1  NSWMC concerns about the Scoping Worksheet

Guideline 3 claims that the scoping process will provide “more focussed SEARs that emphasise relevant matters for consideration” (Guideline 3, page 3). Guideline 3 and the accompanying scoping worksheet provide for a high level and simplified risk assessment.

The generic nature of the Scoping Worksheet prevents it from providing the level of detailed risk assessment that might lead to more tailored and focussed SEARs. NSWMC acknowledges that DPE are attempting to create a generic product that can deal with different types of SSD.

While the Scoping Worksheet might represent an increase in the level of assessment of issues pre-lodgement for some types of SSD projects, a more detailed risk assessment is necessary for complex projects, with complex impacts.

The Scoping Worksheet is overly simplistic in it is methodology and structure for large projects which may have varied impacts. The worksheet is essentially a simplified version of a broad-brush risk assessment process but without the capacity to capture the nuance in either impacts or mitigation measures to be considered. The following issues are concerning:

- **Too simplistic** - The stated purpose of the scoping worksheet is to enable the SEARs to be tailored to the project however the worksheet is overly simplistic in its grouping of issues, meaning the worksheet is not capable of splitting out aspects of an issue into areas that require detailed assessment and areas which do not require a detailed assessment. For example water quality covers a broad range of potential impacts (e.g. groundwater quality (extractions and recharge), surface water quality from run-off, surface water impacts from discharges etc.) however there is no capacity within the Scoping Worksheet reviewed for these different impacts to be assessed.
separately. In relation to water, there is no separate category for groundwater impacts to be considered.

- **Outputs too high level to tailor SEARs** - The outputs from the worksheet are simple conclusions as to whether the issue is a ‘key issue’ and/or ‘targeted community consultation’ in the issue is required. For most major new mining projects or major expansions or extensions, it is likely that the Scoping Worksheet would identify that most issues require assessment as a key issue. For mining projects, the scoping worksheet does not provide any meaningful guidance to tailor the SEARs for the project. The information relevant to the tailoring of the assessment would be found in the scoping report meaning there is little or no value in the Scoping Worksheet. At best, the outputs from the Scoping Worksheet are a high level summary of whether aspects of a particular issue would trigger further assessment.

- **Characterisation of impacts and level of assessment**

  Section 4.2 outlines the process of characterising issues as “Key Issues” and “Other Issues”. Despite ‘Keys Issues’ and ‘Other Issues’ being identified as common EIA terminology in Guideline 3, these phrases are not typically used in NSW.

  The Scoping Worksheet groups issues broadly. Key issues need to be focussed on the specific issues relevant to a project and not be open-ended. For example, the key issue might be “the water quality in creek X” or “potential impacts on flooding and water flows in creeks X and Y”, “Particulate matter and diesel particulates but not odour, traffic impacts associated with construction but not operation”, and not simply apportioned on a broad issue basis. For example not simply stating water quality or water quantity is a key issue without further definition. Further, the limits of assessment should be able to be defined. For example “the water quality and quantity impacts to x distance downstream and X, Y and Z riparian/ water dependant ecosystems”, rather than assessing impacts for an unlimited distance downstream.

- **Does not capture project controls** - A further issue with the Scoping Worksheet is that it does not capture controls to be incorporated into the design of the project nor does it have regard to risk control effectiveness. Design measures that avoid or engineer out impacts should be able to be clearly considered in the assessment.

- **Duplicates (high level) risk assessment** - The Scoping Worksheet is likely to duplicate the conventional risk assessment process that mining projects would often be subject to as part of internal decision and constraints assessments processes. A summary of the outcomes of such risk assessments have been routinely provided with Preliminary Environmental Assessments and Requests for SEARs in the past and are an appropriate way to identify and categorise environmental risks.

- **Is a poor communication tool of actual impact** - In terms of informing the broader community and other stakeholders regarding the likely impacts of a project, the simplistic assessment of issues and the lack of ability to have regard to measures to effectively manage impacts has the potential to mislead people by suggesting that impacts are likely to be more significant than they will be.

- **Requires detailed information, which is premature at the scoping stage** - Appendix B of Guideline 3 contains the required structure and content of the Scoping Report. However a number of the matters contained appear to be very premature for inclusion in a scoping report, for example project details in respect of construction equipment or operational sequencing, detail of the proposed assessment methodology and mitigation measures for each relevant impact identified during the engagement phase and the acceptability of cumulative impacts.

If the Scoping Worksheet is required as part of the Request for SEARs process for mining projects, there is a high likelihood that the worksheet would be filled out as a formality rather than being used as an effective part of the mine planning and environmental impact assessment process. Mining projects
and many other types of SSD projects will continue to undertake more detailed risk assessments that will inform the Scoping Report and request for SEARs.

NSWMC provided comments on the Scoping Worksheet format and wording in our submission made in 2016. No changes having been made to the worksheet, those comments remain valid.

In the event that DPE does not accept NSWMC’s proposals with regard to proponents electing to use a risk assessment in lieu of the scoping worksheet, the Scoping Worksheet will need further development to make it useful. This will include developing industry sector specific scoping worksheets to provide for the different types of impacts relevant to a project.

Recommendations

15. NSWMC provided a submission in the Scoping Worksheet in 2016. No changes have been made to the scooping worksheet and DPE should re-consider NSWMC’s 2016 submission.

16. The Guideline should provide that proponents can elect to use either the Scoping Worksheet of an approved risk assessment methodology to inform the development of a scoping report

17. In the event that DPE does not provide for proponents to elect to use a risk assessment instead of a Scoping Worksheet, DPE need to prepare industry specific scoping worksheets.

3.2 NSWMC proposal for an alternative approach to identifying impacts and SEARs for a project

3.2.1 Scoping

NSWMC proposes the following alternative approach to scoping a project:

- DPE should develop standard SEARs for different types of development including mining specific standard SEARs.
- The proponent’s would complete either the Scoping Worksheet or an approved risk assessment and prepare a Scoping Report. The Scoping Report would propose the project’s SEARs, based on the standard SEARs, and would be required to justify the proposed SEARs on the basis of the risk assessment:
  - Where the standard SEAR is not included, why it is not included
  - Where an additional or modified SEAR is included why this is required.

Explanations of the proposed SEARs should rely on the Scoping Worksheet, or a risk assessment undertaken through an approved framework. The choice of a risk assessment framework would be flexible, but would be discussed with DPE as appropriate in an initial meeting. The choice of undertaking the standard DPE Scoping Worksheet or an approved risk assessment framework would allow proponents with different scale and sophistication of operations to choose the appropriate way of scoping a project.

Figure 1 below sets out NSWMC’s proposed alternative approach to scoping and setting the SEARs.

3.2.2 Public exhibition in the scoping phase

Section 7 provides for public exhibition of the Scoping Report and section 8 provides for a Statement of Reasons to be provided when issuing the SEARs.
NSWMC does not support the requirement for public exhibition during scoping. The scoping engagement provides an appropriate opportunity for the issues of importance to the community and community views on the assessment process to be captured and responded to by the proponent and DPE.

The introduction of requirements for public exhibition of the Scoping Report and the publication of a Statement of Reasons makes it more likely that the decision to issue the SEARs will be viewed by the Court as a ‘reviewable decision’. Because the proposed new statutory process would provide for the making of a finding at a particular stage of the development application process it would be unlikely to be viewed by the Court to be merely a step taken in the course of reasoning in coming to a final determination.

Judicial review proceedings in respect of the determination of SEARs may be brought at any stage after the issuing of the SEARs and prior to the determination of the development application or may be raised following the determination (provided proceedings are brought within three months of the determination). Therefore it is conceivable that an objector may initiate proceedings prior to an EIS being lodged in respect of SEARs that have been issued in relation to a SSD project. This clearly has the potential to create significant delays with additional cost to proponents.

The level of consultation required through the scoping engagement removes the need for public exhibition.

In the event that DPE proceeds with public consultation in the scoping phase, NSWMC propose a different approach to public consultation. Instead of placing the Scoping Worksheet on public exhibition, the draft SEARs as proposed by DPE (in consultation with other relevant agencies) should be placed on exhibition. This would require a change to the regulations, but these changes are proposed by DPE in any event.

DPE’s proposal provides for public exhibition within the current 28 days from the request for SEARs. NSWMC propose that the process from request for SEARs to issuing SEARs would be 42 days. This short extension is not material in the lengthy process of the EIA and would provide significant advantages including:

- Focussing the public consultation on the proposed SEARs
- Allowing the community and proponent to comment on the Government’s proposed SEARs.

NSWMC does not propose that the issuing of SEARs would be accompanied by a Statement of Reasons. The proposed process is similar to the Queensland “Terms of Reference” model of identifying the assessment requirements for a project and seeking the community’s input on those requirements.

**Recommendations**

18. DPE should develop draft SEARs.

19. During the scoping process the proponent should identify the proposed SEARs for the project and the scoping report should justify any departure from the Standard SEARs by reference to the scoping report or risk assessment undertaken.

20. The period for the issuing of SEARs from the request for SEARs should be extended to 42 days.

21. Upon a request for SEARs the Government (DPE and other relevant agencies) should consider the proponent’s scoping report and request for SEARs and prepare draft SEARs within 14 days.

22. The draft SEARs should be publicly exhibited for 14 days.
The SEARs should be issued 14 days after the close of the public exhibition period.

Figure 1 NSWMC proposal – Scoping and identification of SEARs

1. Project Preparation
   - Project description and justification
   - Identify relevant matters either through a draft scoping worksheet of risk assessment
   - Outline scoping engagement including previous/ongoing engagement
   - Identify relevant community and stakeholders to engage

2. Scoping Meeting
   - DPE approve risk assessment proposed
   - Clarify assessment pathway
   - Agree on level of engagement and define community and stakeholders

3. Scoping Engagement
   - Identify the issues of importance to the community
   - Identify the community’s views on the proposed approach to assessment
   - Tailor to the needs and level of knowledge around a project

4. Prepare Scoping Report and draft SEARs
   - Finalise scoping worksheet of risk assessment
   - Respond to community nominated issues of importance
   - Identify proposed SEARs including justification (using the Standard SEARs) on the basis of the preliminary assessment of impacts

5. SEARs Development
   - Request SEARs
   - DPE and agencies consider the Scoping Report
   - SEARs finalised within 14 days of the request

6. Exhibition of the SEARs
   - SEARs placed on exhibition for 14 days
   - Scoping Report available on the DPE website
   - Public submissions sought on the Draft SEARs only

7. Issue SEARs
   - Final SEARs issued 14 days from the close of public exhibition.
3.3 Engagement during the scoping process

3.3.1 Identification of the community and stakeholders

Whilst section 6.1 of Guideline 3 clearly anticipates that the process of consultation and engagement with the community and stakeholders should be tailored to the project, this is undermined by the definition in Guideline 6 – Community and Stakeholder Consultation, which defines community and stakeholders as “All those with a stake in the project including community members that might be impacted by, or interested in the project” (Guideline 6, page 25), rather than the relevant community and stakeholders as defined by the project at the relevant stage. This issue is discussed in detail in the recommendations with regard to Guideline 6 below in this submission (see section 6.1). This definition is too broad.

Section 5 of Guideline 3 provides that at the Scoping Meeting the proponent and DPE are to agree on the community and other stakeholders to be engaged. Given the definition of community and other stakeholders, there are no criteria on which DPE and the proponent can decide where to place the boundaries of the Scoping Engagement.

The Guideline notes that some large scale infrastructure and development projects already undertake early engagement as part of their project planning and development procedures and that this may meet the requirements of the scoping process. To avoid any doubt Guideline 6 should state explicitly that in terms of Scoping Engagement:

- Where a Community Consultative Committee (CCC) already exists for a project that it can provide a mechanism for consultation
- That where a project is a brownfield project the consultation undertaken as part of the day to day operation of the existing approved project may inform the scoping process, as well as consultation that may have been undertaken for any recent development application.

It is unhelpful to duplicate the requirements for consultation across several documents. It is recommended that consultation and engagement should be dealt with exclusively by Guideline 6, and only referenced in other Guidelines. Guideline 3 should include a brief section that makes clear the purpose of the scoping engagement and then reference Guideline 6.

3.3.2 What is sought from the community

The Guideline refers to what is sought from the community during the scoping process in a number of different ways. Figure 3 refers to “what are the community’s views of the impact”, section 6 - Scoping Engagement, refers to the community’s perspectives.

It is important that the guidelines are clear on what is being sought from the community. Community attitudes to an impact will be relevant to the design of the project (which should have regard to these issues) and the overall assessment in the EIS and SIA, however the community views captured in engagement associated with the scoping stage should be directed at identifying:

- What issues are of importance to the community and
- What are the community’s views on the proposed approach to assessment?

Views on what is important and the approach to assessment are very different from views on the potential impact. Obtaining the community’s views on the nature and magnitude of potential impacts before the studies relating to those impacts is complete is fraught with risk as the (understandable) lack of answers at this early stage has the potential to allow poor science from other sources to fill the knowledge gap. As Guideline 3 will also inform the community regarding the expectations during the scoping stage, it is critically important that the community does not expect answers on the likely extent of impact at this stage of the assessment but has confidence that the assessment will provide these answers when completed.
Recommendations

24. The definition of “community and stakeholders” needs to be responsive to the project. The definition contained in Guideline 6 – Community and Stakeholder Engagement, and carried through to other Guidelines including Guideline 3, is too broad (see also Recommendation 52) and creates the risk that the community and stakeholders identified by DPE and the proponent at the scoping meeting could be the cause for a later challenge to an approval.

25. Detailed guidelines about consultation at all stages of the pre-lodgement and EIA phases of the project approval should be contained in Guideline 6 – Community and Stakeholder Engagement. Guideline 3 – Scoping an Environmental Impact Statement, should only include a brief description of the purpose of the scoping engagement.

26. Guideline 6 should define what is sought from the community in the scoping process:
   a. What issues are of importance to the community and
   b. What are the community’s views on the proposed approach to assessment.

27. NSWMC provided a submission on the scoping worksheet in 2016. No changes have been made to the scoping worksheet and DPE should re-consider NSWMC’s 2016 submission.

28. The Guideline should provide that proponents can elect to use either the scoping worksheet or an approved risk assessment methodology to inform the development of a scoping report.

29. In the event that DPE does not provide for proponents to elect to use a risk assessment instead of a scoping worksheet, DPE need to prepare industry specific scoping worksheets.

3.4 Scoping Report

3.4.1 What is included in the Scoping Report

Guideline 3, section 7 includes a list of inclusions in the Scoping Report. It is recommended that a further dot point be added which requires the Scoping Report to include details of studies already undertaken, the methodologies used for these studies and the timing when these studies were undertaken. Some projects have already been through significant constraints assessment work prior to the request for SEARs. Government policy regarding assessment approaches is prone to change over time and agencies recognise that it is unreasonable to require proponents to redo a significant body of work where it has been undertaken using what was the standard assessment requirements at that time. This is generally dealt with through transitional arrangements for projects part way through an assessment process and the details of studies undertaken to date will assist DPE and other agencies in determining whether or not the transitional arrangements should apply to the project.

3.4.2 Additional detailed work in response to stakeholder concerns

The two examples provided in section 7 of additional work need further consideration for the following reasons:

- The example of the threatened species should be removed or amended. While it will be appropriate to undertake surveys for species specifically identified by community members as likely to be present in the Project Area, the approach to surveying, for example the number of survey sites, for these species should align with survey requirements under relevant NSW agency
The guidelines should not create an expectation that additional surveys will be undertaken over that required by relevant guidelines.

- **The example of the additional monitoring sites for air quality should also be amended or deleted.** The Approved Methods for Air Quality Impact Assessment already include specific requirements in terms of the location of monitors. Rather than address specific ‘additional’ monitoring locations in the Scoping Report the engagement with the community during the EIA process can identify whether these additional monitors will assist in the assessment of impacts and include the results in the final report. This approach encourages further engagement with the community during the EIS preparation process and enables flexibility in the locating of any additional monitors without it being a point of contention during the scoping phase.

### 3.4.3 Public exhibition process

As noted in section 3.2.2, NSWMC does not support public exhibition during the scoping phase. The guideline does not contain any details regarding the nature of the exhibition process. i.e.:

- Where will the document be available for review?
- How will the notification period be advertised and who is responsible for the advertising?
- Are there any costs associated with the exhibition process?

Section 7 includes ‘extensions of mines’ in a list of projects that may require public exhibition. The application of the exhibition period for ‘extensions to mines’ needs to be subject to some threshold. Not all modifications to existing mines will warrant public exhibition. Guideline 3 should provide clear criteria to determine which extensions to existing projects will require both SEARs to be issued and the public exhibition of the Scoping Report (and SEARs if this recommendation is accepted).

The section 7 of the Guideline states that when the Scoping Report is placed on exhibition public feedback will be sought via online questions relating to the scope of the EIS. NSWMC propose that the draft SEARs should be placed on exhibition. It is not appropriate for DPE to seek feedback via specific questions about the scope of the EIS. Rather the Department should exhibit the draft SEARs and only ask whether the SEARs are appropriate.

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**Recommendations**

30. Reconsider and delete or amend the examples of additional work to be done in response to community concerns provided at section 7 of Guideline 3.

31. Include details of the exhibition process in Guideline 3, including:
   a. Where will the document be available for review?
   b. How will the notification period be advertised and who is responsible for the advertising?
   c. Are there any costs associated with the exhibition process?

32. Guideline 3 should provide criteria to determine when an extension to an existing mine will require:
   a. SEARs
   b. Public exhibition.

33. DPE should not ask specific questions on the scope of the EIS during public exhibition. The draft SEARs should be exhibited and the public should be asked to comment on whether the SEARs are appropriate.
3.5 Setting the SEARs

DPE proposes that the Scoping Process, including the increased community involvement will produce more focussed assessment and reduce the propensity for new issues to be raised and require assessment post the lodgement of the EIS. As identified above NSWMC have concerns that the process proposed would not achieve this result.

There are other steps that Government should take to ensure that all issues are raised and considered when the SEARs are set. While it will always be difficult to constrain issues that the community may raise throughout the process, the Government should be able to control when and how issues are raised by DPE and other Government agencies.

3.5.1 DPE and other government agencies

The guidelines provide an opportunity to provide guidance not only to proponents but also to DPE and other agencies about best practice. This includes how SEARs should be set and the circumstances in which SEARs can be changed.

Guideline 3 should include the following guidance on the setting of SEARs for DPE, other agencies and the Commonwealth:

- The process of setting SEARs should involve all relevant NSW government agencies and the Commonwealth. DPE should however be the lead agency in relation to the project. Issues in relation to assessment that arise between DPE and other agencies, including the Commonwealth should be resolved at the SEARs stage and reflected in the SEARs.
- The current practice of agencies sending lengthy correspondence to DPE, which is then attached to the SEARs without guidance to proponents must end. It is confusing and unhelpful to proponents, the community and decision makers.
- An adequacy process should be introduced (see section 5.1 of this submission).

3.5.2 Amendment of the SEARs – DPE and agencies

Once defined the SEARs should be binding on the proponent, DPE and other agencies. An EIS should not be considered to be inadequate if the project remains consistent with the project described in the request for SEARs and the EIS meets the assessment required by the SEARs. Neither DPE or other agencies should be able to request further information or assessment that is not foreshadowed in the SEARs.

There are three circumstances where there may be a need to change the SEARs following their initial issue:

- **Scenario 1** - The project is altered such that impacts have changed meaning the SEARs are no longer reflective of the assessment requirements for the Project.
- **Scenario 2** - New information comes to light regarding potential impacts that may be considered material or there are strong public policy grounds for changing assessment requirements. For example a particular prescribed assessment approach is found to be unsuited to the assessment of issue at hand and there is no longer any confidence in the assessment findings using the prescribed approach.
- **Scenario 3** - Two years has elapsed since the issue of the SEARs.

Guideline 3 should provide guidance on how the SEARs are revised under each of the three scenarios as follows:

- **Scenario 1** - In scenario 1, the Guidelines should include a clear process for identifying how DPE are to be notified of the proposed change of project and the means of amending the SEARs. It is recommended that a Revised Scoping Report be issued to inform the proposed review of SEARs.
As with the initial request for SEARs, the Secretary should be required to reissue revised SEARs within the 28 day period following the request.

This review of SEARs should not be used by agencies as a means of updating assessment requirements for issues not materially affected by the proposed change. For example, if noise was a key issue and remains a key issue, a revision of SEARs should not be used as means of updating assessment requirements.

If the scope of the impacts expands to other areas, the previous assessment approach for the issue should remain the same for the expanded impact area. For example if Creek Y is now also a potential discharge point in addition to Creek X, the assessment approach for Creek X should also apply to Creek Y. The request for a revision of SEARs would not extend the two year currency of the SEARs from when initially granted.

If a proponent proposes a materially different project to that for which SEARs were initially sought, it would be reasonable for the Secretary to issue completely new SEARs and recommence the two year currency period. In these circumstances, the SEARs could be revised to reflect any changes in assessment requirements. If some studies had already substantially commenced the proponent should be able to put forward a case for the continuation of the earlier assessment requirements in relation to that aspect of the project however DPE should have clear policies around seeking revised SEARs to prevent proponents from exploiting the revision process to maintain outdated assessment approaches for essentially new projects.

- **Scenario 2** – In scenario 2 the proponent should be notified of a proposed change to the assessment process and be provided with an opportunity to comment on the proposed revision to the SEARs. The change in SEARs under scenario 2 must be made as soon as the change to assessment requirements is identified to minimise cost and delay implications for the proponent. If necessary, the ability to refer any disputes to a third party for technical advice should be allowed. A change to the SEARs under Scenario 2 should allow for an extension of the currency of the SEARs sufficient to enable the revised assessment approach to be undertaken. This review should not enliven other SEARs and the extension of currency would also extend to the other SEARs.

- **Scenario 3** - Scenario 3 is currently managed through Schedule 2, Part 1 Clause 3(7) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), which requires the proponent to consult with the Secretary regarding assessment requirements if the two year period following issue of the SEARs expires.

### 3.5.3 Amendment of the SEARs - Planning Assessment Commission

Whilst section 79C provides the decision maker with a broad discretion on the matters, which it evaluates in making a decision, the Government needs to consider how to ensure that the PAC is satisfied that the assessment undertaken considers all relevant issues. The DPE proposals to replace the PAC with an Independent Planning Commission (IPC) outlined in the Legislative Updates Discussion Paper publicly exhibited by the Government in 2017 propose that the IPC would consider issues for assessment at a stage 1 hearing after being delegated the decision making function. This would occur after the EIS have been exhibited and is not appropriate, as it would require further incremental assessment consuming more time and resources.

#### Recommendations

34. DPE should be the lead agency for development assessment and should be empowered to resolve issues about the assessment of projects and ensure that the SEARs are the whole of NSWW government requirements for the assessment of a project, as well as the Commonwealth’s assessment requirements.

35. The SEARs must be the assessment requirements for a project. The practice of
appendix agency correspondence to the SEARs should cease.

36. Guideline 3 should provide guidance to DPE and other government agencies on when it is appropriate to amend the SEARs and the process for making the amendment.

37. DPE need to consider how to ensure that any delegate of the Minister is satisfied with the SEARs before the finalisation of the EIS.

**3.6 Scoping meeting**

The process set out in section 5 of Guideline 3 generally reflects good practice. The process of requiring a public register of meetings on DPE’s website needs to be a balance between transparency and causing concern in the community. As there could be a lengthy gap between meetings with DPE and consultation on the proposal, and in some cases the proposal may not materialise. This could result in unnecessary concern about projects. It is recommended that the register of meetings on a project be published at the time of the scoping report exhibition.

**Recommendation**

38. DPE should publish the register of meetings with the proponent at the same time as the Scoping Report is exhibited.
Guideline 4 largely provides guidance in accordance with current best practice for the preparation of the EIS. The Guideline introduces some new concepts, including the project description and maximum parameters that have the potential to be beneficial to industry, regulators and the community.

4.1 Project description

Overall the proposed requirement for compliance with a ‘project description’ chapter is a positive development. It is important that the level of flexibility provided by Guideline 4 to describe the project is not restricted.

Guideline 4 should also provide that a consolidated list of commitments and mitigation measures should also be included in the EIS and should be referenced in the project description (and included as appendices to the EIS).

Compliance with a ‘project description’ chapter should only apply to development applications lodged after the commencement of the Guideline, and the modification of those projects. The project description should not apply to modifications of existing development as this would potentially change the parameters against which the development was originally approved (and currently operating under). Guideline 4 should clearly state that the requirement for a ‘project description’ chapter will not apply to the modification of approvals granted before the commencement of the Guideline.

Recommendations

39. Guideline 4 should provide that a list of commitments and mitigation measures should be included in the appendices of the EIS and referenced in the project description.

40. Guideline 4 should state clearly that the requirement for a ‘project description’ chapter in the EIS will only apply to new SSD projects and subsequent modifications of those projects, not modifications of projects approved at the time of the introduction of Guideline 4.

4.2 Maximum parameters

4.2.1 Maximum parameters concept

The NSW mining industry is generally supportive of the concept of assessing maximum parameters of a project. DPE propose that the approval of maximum parameters will minimise the need for modification applications. This is particularly important as SSD consents become dominant and given the DPE’s proposals to end transitional arrangements for the modification of Part 3A approvals. The maximum parameters approach has the potential to avoid new applications.

However the extent to which maximum parameters will reduce the need for modifications/new applications will largely come down to DPE’s assessment requirements in respect of features that are to be assessed under the ‘maximum parameters’ approach and the appetite of DPE to accept this approach for mining developments. It is assumed that such an approach would require proponents to assess the ‘worst case scenario’ and then provided the development falls within those assessed worst case parameters it will be permitted under the approval.

The section with regard to the maximum parameter approach to assessment provides little more than an explanation of the concept. This is useful for the community but does not provide the level of guidance required for proponents to put the concept into practice. Much detailed guidance should be

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included in Guideline 4 as to the assessment approach that is expected to be adopted when proponents are seeking to utilise the maximum parameters approach. Guideline 4 states that examples of the maximum parameters approach in practice will be added to the DPE website. Specific examples/case studies should be provided including mining development. Further details of DPE’s expectations of the assessment approach and the case studies should be provided for stakeholder consultation before the Guideline is finalised as these will provide the necessary detail of the proposal that is currently missing from the Guideline. This guidance also needs to be clarified for the purposes of the consent authority making decisions.

4.2.2 Other comments on section 3.7.2

It is recommend that the introductory paragraph of section 3.7.2 be amended as follows as the detailed design occurs following approval, not during preparation of the EIS:

However, there may be circumstances where particular elements of a project require further design at the time of finalising the EIS during the undertaking of the project or latter stages of the Assessment process.

The last sentence in the second last paragraph on page 9 should also be amended as follows:

This will give confidence that the Project, as constructed and operated, is within the parameters and impacts assessed in the EIS and approved through the conditions of consent.

Recommendations

41. DPE should provide much more detailed guidance on the level of assessment required when utilising the maximum parameters approach. This detailed guidance should include specific examples/case studies of SSD projects including mining development where DPE will accept this approach to assessment. This detailed guidance and the case studies should be provided to stakeholders during the consultation on the EIA Improvement Project.

42. Improve the clarity of section 3.7.2 by making the following amendments:

a. However, there may be circumstances where particular elements of a project require further design at the time of finalising the EIS during the undertaking of the project or latter stages of the Assessment process.

b. This will give confidence that the Project, as constructed and operated, is within the parameters and impacts assessed in the EIS and approved through the conditions of consent.

4.3 Other comments on Section 3 – Form and Content of an EIS

The requirements in terms of form and content are typical of current EISs for major mining projects in NSW. There are some areas of section 3 that would benefit from further consideration, including:

- Section 3.5 – Executive Summary - It is unclear what is meant by the sentence ‘The Summary should include a section indicating the current phase and future phases in the EIA’ (final paragraph on page 4).

- Section 3.6.3 – Project History – It is recommended that this section also includes project context such as locality and general description of the surrounding environment. While the impact assessment sections contain more detailed descriptions of the surrounding environment, a brief description of the project setting early in the EIS assists the reader in understanding the project.
• **Section 3.6.4 – Alternatives** - The suggested EIS structural location for consideration of alternatives is problematic. If included in the introductory sections, as is proposed in Guideline 4, the alternatives are presented and discussed before the project itself is described. A better approach would be to include the alternatives and project justification straight after the project description section so it avoids repetition and has better context. The statement that a detailed impact assessment of alternative options is not required is supported.

**Recommendations**

43. Clarify what is meant by ‘The Summary should include a section indicating the current phase and future phases in the EIA’ in section 3.5 – Executive Summary.

44. Include a requirement of a brief description of the project context such as locality and general description of the surrounding environment in section 3.6.3 – Project History.

45. Include the alternatives and project justification (section 3.6.4) straight after the project description section.

### 4.4 Section 3.9 - Engagement

As identified in comments with regard to Guidelines 3 and 6, section 3.9 should limit engagement to stakeholders relevant to the project rather than the definition ‘community and stakeholders’.

### 4.5 Other comments on Guideline 4

Other areas of Guideline 4 that would benefit from clarification or amendment are as follows:

• **Section 3.7.3 - Changes.** This section deals with changes and how these are identified. The third paragraph should make reference to Guideline 5 – Responding to Submissions.

• **Section 3.10.2 – Other Issue Assessment.** In the dot points related to methodology, there is no specialist report for ‘Other issues’. Accordingly, the reference to suitability/qualifications will be of the lead EIS author, not a specialist as stated in this section.

• **Section 3.12 - Evaluation and conclusion.** The Guidelines do not reference a specific requirement to address the principles of Ecological Sustainable Development. These should be included as part of the final evaluation of the project to ensure the objects of the EP&A Act (Section 5) are satisfied.

In addition the social and economic impacts of the proposed project should be included. The evaluation and conclusion should not include the weighing of the impacts and benefits of the proposed project. Bullet points 4 and 5 on page 17 should be amended as follows:

- Bullet point 4 – “an evaluation and weighing up of the main social, economic and environmental impacts (costs and benefits) associated with the project”

- Bullet Point 5 “whether on balance, the impacts and benefits of the proposal favour an evaluation of other impacts relevant to the public interest.”

• **Section 4.2 – Online Lodgement.** The 10MB limit for files is impractical for large EISs with many figures.

**Recommendations**

46. Make the following changes to Guideline 4:
a. Bullet points 4 and 5 on page 17 should be amended as follows:

Bullet point 4 – “an evaluation and weighing up of the main social, economic and environmental impacts (costs and benefits) associated with the project”

Bullet Point 5 “whether on balance, the impacts and benefits of the proposal favour an evaluation of other impacts relevant to the public interest.”

b. Increase the limit for online lodgement size of files to reflect the common size of EIS files.

c. Amend section 3.10.2 so that it does not refer to “specialist author” as the other issues assessment does not have a specialist author.

d. The discussion of the identification of changes in section 3.7.3 should reference the Response to Submissions.
5  Guideline 5 – Responding to Submissions

The Guideline generally reflects current good practice in Response to Submission documents.

5.1  Dealing with significant changes

The EP&A Act provides that an amended application must be exhibited if the amended application ‘substantially differs from the original application and the environmental impact of the project has not been reduced’. While the Act is referred to in section 2.2 of the Guideline, section 3.2 states that where there is ‘significant change to the project of new or significant impacts having been identified as a result of changes’ the proponent with DPE’s agreement may decide to amend the application and that DPE may decide to exhibit the application.

The wording of section 3.2 of the Guideline is confusing and introduces a threshold for the public exhibition of an amended application that is inconsistent with the EP&A Act and is a lower threshold.

Recommendation

47. Section 3.2 of the Guideline 5 should be amended to make it clear that DPE is only required to exhibit an amended application and accompanying submissions report if the amended development application ‘substantially differs from the original application and the environmental impact has not been reduced’.

5.2  Limiting issues that require a response

Many of the issues raised in the submissions have typically been adequately addressed in the EIS. Guideline 5 should explicitly address this issue by providing that the proponent does not need to respond further where the issue is clearly dealt with in the EIS and the relevant section of the EIS can be referenced.

Agencies are bound by NSW policy and should not provide submissions on a project that are inconsistent with published government policies. This should be clear but agency submissions continue to be made in a manner inconsistent with other government policies. For instance NSW Health makes submissions raising concerns regarding health impact associated with particulate levels that are below the NSW adopted criteria. To avoid doubt and for the clarity of the agency, community and proponents, Guideline 5 should clearly state that submissions by government agencies are to be consistent with NSW Government policy.

Recommendation

48. Guideline 5 should clearly state that submissions by government agencies are to be consistent with NSW Government policy.

5.3  Requests for further information

DPE may request further information from the proponent if an agency advises that the Submissions Report has not adequately addressed their submission. Recently it appears that a new process has been (informally) introduced into the environmental assessment process, whereby government agencies provide DPE with a response to the response to submissions document after it has been lodged. Whilst DPE does not always formally request the proponent to respond to the agencies’ responses, a failure to respond may leave the proponent, and potentially DPE, open to criticism and potential legal challenge following the determination of a development application.
To address this new practice the Guidelines should specifically provide for the circumstances in which government agencies are permitted to provide a further response to a Submissions Report. These circumstances should be limited only to issues that the particular agency considers have not been adequately addressed in the Submissions Report, and should not be used as an opportunity to reiterate or repeat matters that have already been raised in previous submissions.

Section 5.2 states that ‘Requests for further information may be made at any time prior to determination.’ Whilst requests for information may need to be made at a later stage in the assessment process, for example following a review of a development application by the PAC, it is important that DPE make any requests for information as soon as possible following the identification of an issue or any deficiency in the assessment or Submissions Report. For example, if DPE is of the view that the Submissions Report does not address all the issues raised in submissions, further information should be sought from the proponent as soon as possible and before the Department finalises its preliminary assessment report and refers the application to the PAC.

**Recommendations**

49. Guideline 5 should include an express requirement for DPE to request any further information from the proponent as soon as possible after any issues have been identified.

50. Guideline 5 should provide where agencies should be able to provide a response to the proponent’s response to submissions. A response by an agency will only be permissible to address issues that the particular agency considers have not been adequately addressed in the Submissions Report, and should not be used as an opportunity to reiterate or repeat matters that have already been raised in previous submissions.

### 5.1 Adequacy of the EIS

The process of considering the adequacy of the EIS before it is placed on exhibition should be reintroduced. An adequacy process would remove some of the concerns about government agency submissions. The adequacy process would involve an assessment of the draft EIS by DPE and agencies that have provided input to the SEARs regarding the adequacy of the assessment prior to formal exhibition of the EIS. The EIS can then be finalised to address any deficiencies in the assessment relative to the requirements of the SEARs. The adequacy process should address whether the EIS addresses the SEARs not the merits of the project.

**Recommendations**

51. A formal process of considering the adequacy of the EIS before the exhibition should be reintroduced.

### 5.2 Other issues

Other issues that should be addressed by DPE are:

- The current process and format of publication of submissions on the DPE website makes it difficult to interrogate the submissions.
- Submissions are routinely accepted late, or extensions are provided, drawing out the process and making it difficult for proponents to respond.

**Recommendations**

52. DPE should review the way formatting and publication of submissions on the DPE
53. DPE should not accept submissions after the close of the public exhibition period.
6 Guideline 6 – Community and Stakeholder Engagement

NSWMC has very significant concerns about Guideline 6 – Community and Stakeholder Engagement. Overall the approach taken by the Guideline is too prescriptive, from the definition of community and stakeholders to the participation outcomes.

It does not allow scope to design community and stakeholder engagement to identify relevant stakeholders and undertake the level of consultation appropriate to the circumstances of the project. The approach is not proportional and does not adequately provide for brownfields projects where there will be a substantial level of understanding both by the community and by the proponent of the community.

6.1 Identification of community and stakeholders

Section 3.2 of Guideline 6 provides that at the Scoping Meeting the proponent and DPE will agree on who the appropriate stakeholders are:

‘discuss the proposed approach to engaging the community and other stakeholders based on:

- a list of the community and other stakeholders that they propose to contact including those who will or have the potential to be impacted and those with known interest or history of interaction with this or similar projects
- consideration of the preliminary responses to the questions in Table 2 that will determine the engagement approach
- the requirements for engaging the community and other stakeholders during scoping outlined in this guideline.’

“Community and other stakeholders” is a defined term in the Guidelines and means:

‘All those with a stake in a Project including community members that may be impacted by, or interested in the project’

The definition allows ‘stakeholders’ to include any person, however the appropriate stakeholders are to be determined by a simple meeting to review a list with DPE. The definition and the validation approach will potentially leave the proponent open to legal challenge. For example, where a person is not identified on the agreed list, and is not consulted, this introduces a potential for legal challenge to the consultation process given that the definition implies that any person should be consulted.

In contrast to the simple definition of ‘stakeholder’ in the draft Guideline 6, the Draft Social Impact Assessment Guideline, December 2016 (draft SIA Guideline), provides advice on the selection of appropriate stakeholders in section 2.3.1 being "potentially affected people and groups, and other interested parties". The approach outlined in the draft SIA Guideline has merit as it draws a distinction between potentially affected people and groups, and other interested parties. This is then followed through in the draft guideline in terms of acknowledging different techniques and processes to identify and take account of feedback from varying people, groups and interested parties.

In the context of a mining project, there is a need to clearly identify potentially affected people and groups. Whilst important views will be expressed by interested parties, it is critical that the proponent can prioritise an appropriate level of effort in engaging affected people and groups. General non-project specific comments from other interested parties should be dealt with by political processes and government policy. Given that the distinction between affected and interested parties has already been published in DPE’s Draft Social Impact Guideline, it should be followed through and supported in the draft Guideline 6 and referenced appropriately throughout all the other Guidelines.
Throughout draft Guideline 6, the terms community and other stakeholders are combined. For example, this occurs throughout Table 2, which attempts to provide a simple approach to determine the level of community or other stakeholder interest. However, it is clear that the people and groups that comprise the community in proximity to a project are likely to have a different level of interest and concern regarding different aspects of a proposal often in a local context, compared to other stakeholders or interested parties who have different interests, potentially driven by issues at a global scale.

The suggested process of blending all these categories together is likely to mask the evidence showing which groups have which level of interest, and this is key information that will commence the process of defining an effective engagement strategy. The expected engagement requirements set out in Table 3 do not distinguish between stakeholder categories. A more considered approach is identified in the draft SIA guideline:

‘The ‘stake’ that each of these different individuals or groups has in a project will vary, as will the level of engagement required for each. Stakeholder analysis should be used to assess the significance of the project to each party from their perspective. This analysis should be used to determine the type(s) of engagement activities required.’

**Recommendation**

54. Guideline 6 should rely on the processes of selection of stakeholders already published in the Draft SIA Guideline (December 2016) and include processes that reflect a distinction between affected and interested parties.

### 6.2 Determining the approach to engagement during preparation of the EIS

Throughout the guidelines, there is a focus on the outcomes of community and stakeholder engagement resulting in project changes or refinements. Whilst this may be the case for some or even many SSD projects, there are many examples of major mining project modifications in established mining regions such as the Hunter Valley, where the relevant issues and stakeholder expectations are well understood, and the proponent has taken these into account in their early project design phase. **Case Study 1** and **Case Study 2** set out an example of a mining extension project where the proponent’s existing engagement channels and knowledge of the community made specific ‘scoping engagement’ as envisaged by the Guidelines unnecessary and probably counterproductive.

Table 2 should take into account whether the community is aware of the mining industry as this will impact on the level of knowledge they already have. The community’s feedback on how they want to be engaged should also be taken into account.

Table 2 in Guideline 6 provides for classification of the engagement process for projects through a set of criteria. Projects are classified as requiring a Low, Medium and High approach to engagement, which sets the participation outcomes that are required to be met for the project in Table 4.

The outputs of Table 2 are based on the average level of interest across the community and other stakeholders and uses this to determine which tasks should be undertaken. For example, Table 4 only requires the proponent to work with the community and other stakeholders to identify matters that might cause disagreement (Point 6) understand their values and opinions (Point 8) when the level of interest determined in Table 2 (from blending all responses across all stakeholders and groups) reaches a “high” level in Table 2. This approach will fail to identify who has the highest level of interest in which aspects and will therefore fail to identify how these high interest groups should be best engaged. Table 2 and Table 4 in Guideline 6 do not provide an effective way in which to determine the approach to engagement during preparation of the EIS and don’t provide a sufficiently tailored approach. Table 2 and Table 4 in Guideline 6 should be deleted.
Alternatively Table 2 should be restructured to address the issue that while some mining projects will trigger high ratings in the evaluation scale, it will not be appropriate for the approach to engagement to reflect a high level rating or for all of the participation outcomes identified in Table 4 to apply. An example would be a brownfield project where the community has a high level of awareness of the mining industry, and the types of impact that will be assessed and already has knowledge of the project through ongoing operational consultation.

Specific detail should be added into Table 2 of circumstances that would reduce a high rating. Examples of what could be classified as being on the “other side of the ledger” include:

- Having a Community Consultative Committee (CCC) in place
- Having a system in place for responding to community enquiries
- Running community information sessions.

At Point 9 of Table 2 it notes “interest from Aboriginal groups would usually be classed as high or very high.” Where an engagement process is in place to take Aboriginal interests into account the rating evaluation should not automatically fall into high or very high.

### 6.3 Participation outcomes

The Guidelines need to acknowledge that the nature of some projects, and particularly mining project modifications, will drive the need for ‘fit for purpose’ project and context specific approaches to both community and stakeholder engagement and EIA processes. There is a need for consistent acknowledgement of the process and intent for necessary flexibility, where warranted. The avoidance of consultation fatigue is a relevant consideration. At earlier stages there may not be the information available that the community want and consulting early may merely raise questions that cannot yet be answered.

The ‘participation outcomes’ identified in Table 4 is too prescriptive and sets out activities rather than outcomes. Table 4 should be removed.

If Table 4 in Guideline 6 is retained it needs to be significantly amended. This includes changing the title of Table 4 to ‘Examples of Participation’.

A number of detailed ‘outcomes from participation’ are contained in Table 4 of Guideline 6 and are expressed as being the ‘minimum engagement requirements that need to be achieved during the preparation of the EIS.’ The list of outcomes is lengthy and also includes a number of items that are ambiguous, for example ‘remove barriers to participation’ and ‘work with the community and other stakeholders to understand their values and opinions and the opportunities to reflect those values and opinions in decision-making.’ It will be difficult/impossible to measures the success of these outcomes as required by section 4.3, particularly as most are not outcomes, but actions. Section 4.3 should be amended to require the proponent to identify the objectives of engagement undertaken and how these are measured.

Whilst it may be beneficial to include a guide for the sorts of matters that proponents may consider in undertaking community consultation, this prescriptive approach is overly complex and provides significant scope for vexatious litigation following the approval of a development consent should a member of the community consider that any of the ‘outcomes’ were not achieved. Further given the ambiguity of many of the outcomes, it will be very difficult for proponents to know whether they have satisfied the requirements of Guideline 6.

#### 6.3.1 Recommended amendments to Table 4

If Table 4 is to be retained the following amendments should be made:
Recommendations

55. Table 2 and Table 4 of Guideline 6 should be deleted. Alternatively, Table 2 in Guideline 6 should be restructured such that brownfield mining projects where the scope of controversial issues is already known do not automatically trigger high ratings in the evaluation scale.

56. Specific detail should be added into Table 2 in Guideline 6 of situations that would reduce a high rating.

57. Table 2 of Guideline 6 should take into account whether the community is aware of the mining industry as this will impact on the level of knowledge they already have. The community’s feedback on how they want to be engaged should also be taken into account.

58. At point 9 of Table 2 in Guideline 6 the following should be deleted: “For example, interest from Aboriginal groups would usually be classed as high or very high.”

59. Table 4 of Guideline 6 should be deleted. Alternatively, if Table 4 is not deleted it should be amended so that it refers to ‘examples of participation’ that a proponent may consider (rather than minimum engagement requirements) and encourage proponents to tailor outcomes for their specific project based on the issues raised by the community and other stakeholders.

60. If table 4 of Guideline 6 is retained, the following amendments should be made to the ‘Participation outcomes to be achieved’:
   a. Outcome 2 and Outcome 6 in Table 4 of Guideline 6 make reference to “possible alternatives”. This should be “feasible alternatives”.
   b. Table 4 of Guideline 6 should be worded such that it sets realistic expectations for the community and other stakeholders on the level of participation and influence they have.
   c. Outcome 7 in Table 4 of Guideline 6 requires informing the community and other stakeholders about the cumulative impacts and other concerns. Inclusion of positive impacts should also be included.
d. Outcome 9 in Table 4 of Guideline 6 should be deleted.

61. The Guidelines, including Guideline 6, need to acknowledge that the nature of some projects, and particularly mining project modifications, will drive the need for ‘fit for purpose’ project and context specific approaches to both community and stakeholder engagement and EIA processes.

62. At dot point 3 of section 4.3 in Guideline 6 should be amended to require the proponent to identify the objectives of engagement undertaken and how these are measured.

Case Study 1 – Wilpinjong Extension Project – Community engagement during the brownfield extension project

Wilpinjong Coal Mine is located in the developing western coalfields of NSW and produces high quality thermal coal for domestic and export markets. Approval for Wilpinjong Coal Mine was granted in February 2006. An extension to the mine was approved in August 2017.

Background

The Wilpinjong Coal Mine Project extended the life of the mine from 2026 to 2033 and required approximately 800 hectares of open-cut extensions, including development of a new open-cut pit in Slate Gully. The production rate of the mine is unchanged by the extension and continues at 16 million tonnes per annum (Mtpa) of run-of-mine coal. The extension included continued use of the existing mine coal handling and processing infrastructure, including the rail loadout facility. It also included a construction workforce of up to approximately 100 and a peak operational workforce of approximately 625.

Consultation history

Under the existing approval Wilpinjong Coal Mine engaged in regular consultation with stakeholders regarding operations, projects and exploration activities by way of:

- 1800 freecall information line
- Blasting information service
- Community email address
- Letters, emails and face to face meetings with neighbours and interested stakeholders regarding specific activities
- Community Consultative Committee meetings
- Monthly ‘have a chat’ drop in sessions (1st Thursday of every month at the Wollar general store)
- Joint mine managers’ meetings with other local mining operations
- Regular Mid-Western Regional Council briefings and updates
- Newsletters and fact sheet community updates
- Community event participation through sponsorship and donation program

These channels were established to support the operating mine. Although Peabody only acquired Wilpinjong in 2006, a process of consultation with the community has been underway since the mine’s early planning stages.

Following Peabody’s acquisition of the mine, an ongoing commitment to consultation has enabled mine personnel to gain a thorough understanding of stakeholder issues, interests and concerns at an operational level.

Extension Project consultation

When it came to Extension Project consultation, the project team made use of existing consultation channels. The existence of these established channels meant Peabody’s project
consultation was not done in isolation. To be relevant to existing stakeholders it needed to be presented from a whole-of-operation perspective.

Thanks to regular and ongoing consultation through established channels, Wilpinjong knows its stakeholders very well and has a comprehensive understanding, both at an officer and company level, of stakeholder issues. As such there was no need for additional ‘scoping’ activities for the extension project. In fact additional ‘scoping’ activities would have likely resulted in consultation fatigue and raised concerns in stakeholders that they had not been listened to previously in engagement already undertaken.

The engagement channels enable ongoing dialogue and project consultation as an extension of consultation regarding day-to-day operations.

Outcome
The Wilpinjong Coal Mine Extension Project received planning approval in April 2017, with EPBC approval received in August 2017.

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**Case Study 2 – Glencore Coal Assets – Community engagement during brownfield projects**

**Projects**
Recent Glencore brownfield SSD projects in the Hunter Valley include:

- The Bulga Optimisation Project
- Mt Owen Continued Operations Project
- The United Wambo Open Cut Project
- Mangoola Coal Continued Operations

**Consultation history**
Consultation for these projects has used the existing site relationships and mechanisms as the basis for the engagement plan.

These established mechanisms have included:

- Established and productive CCCs
- Existing Stakeholder Engagement Plans and face-to-face meetings
- Community BBQs/Information Evenings
- Support of local events
- Established Cultural Heritage working groups
- Websites
- Regular Newsletters/Mailouts

**Extension project consultation**
Whilst these established processes maybe be augmented during an EIA process, it is the existing relationships that form the basis of the EIA engagement. It is these relationships (and understanding of key issues) formed over many years of operating (and usually multiple EIA/Modification processes) that have contributed successfully to the projects.

Each of these sites/projects have now also undertaken contemporary Social Impact
Outcomes

The Bulga Optimisation Project was approved in December 2014 and a modification approved in January 2017.

Mt Owen Continued Operations Project was approved in November 2016.

The United Wambo Open Cut Project is at post response to submissions stage.

Mangoola Coal Continued Operations (MCCO) had a recent Preliminary Environmental Assessment and SEARs issued.

6.4 Community and Stakeholder Engagement Plan

Section 4.2 of Guideline 6 requires proponents within 28 days of SEARs being issued to publish and update on their project website:

- The outcomes from participation of the community and other stakeholders that have been accepted from the Scoping Report and referenced in the SEARs
- The engagement activities the community and other stakeholders can participate in, when these activities will occur and how they can find out more information or participate
- All available project information that is public at that time.

The above requirements are unnecessary and are likely to simply lead to more cost for proponents. Specifically, the Scoping Report and SEARs will be publically available on DPE’s website and therefore there should be no need for proponents to summarise what has been included in the SEARs.

The preparation of a CSEP needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt over time as a greater understanding of the community is developed. Although Appendix A in Guideline 6 states that the elements in the table provided ‘could be used to structure planning for stakeholder engagement for a project’, the reality is that such guidance will become a mandatory standard. NSWMC recommends that the Guidance on Stakeholder Engagement Plans, should be simplified. Appendix A of this submission contains examples of community engagement plans for mining projects, which reflect the level of detail that should be required in such a plan.

Finally, the last category of information is very vague and could potentially include technical information that may not be complete at such an early stage in the process.

Recommendations

63. In section 4.2 of Guideline 6 the requirement to publish the following within 28 days of SEARs being issued should be deleted:
   a. the outcomes from participation of the community and other stakeholders that have been accepted from the Scoping Report and referenced in the SEARs;
   b. all available project information that is public at that time.

64. In respect of the reference in Guideline 6 to publishing “the engagement activities the community and other stakeholders can participate in, when these activities will occur and how they can find out more information or participate” this needs to be high level, simple, flexible and adaptable. The appropriate time for the CSEP to be submitted is with the Scoping Report, but it should be acknowledged that the CSEP will change and adapt.
over time as a greater understanding of the community is developed.

65. Appendix A in Guideline 6 on Guidance on the Community and Stakeholder Engagement Plan should be simplified and made less complicated.

6.5 Participation during EIS exhibition and responding to submissions

Section 5 of Guideline 6 relates to participation during EIS exhibition and responding to submissions. In particular page 20 of section 5 states that in some cases DPE ‘will arrange briefing sessions during the exhibition period to explain the assessment and submission process and listen to community and other stakeholder perspectives on the project.’

There is no need for DPE to conduct briefing sessions during the exhibition period of an EIS, particularly given that following the introduction of the EIA Improvement Project guidelines there will be a set of guidelines that are available to the community which clearly explain each step of the EIA process. Further the suggested briefing sessions have the potential to lead to a denial of procedural fairness in the event that members of the community or other stakeholders raise concerns in relation to a project that the proponent does not then have the chance to formally respond to.

In addition, many State significant development applications, including applications for mining projects, are referred to the PAC for review including a public hearing. In the event that members of the community wish to make verbal submissions in respect of a development application (in addition to a written submission), the public hearing is the appropriate forum in which this should take place.

The public hearing process is a well documented process whereby public presentations or submissions are able to be presented in a regulated manner and according to the public hearing procedures published by the PAC. Furthermore, importantly the proponent is in attendance at the hearing and is given the opportunity to respond to matters raised either before or following the report of the PAC thereby ensuring that procedural fairness is afforded to the proponent.

If a briefing session by DPE will be beneficial to the community this should be done undertaken in concert with the proponent. This would avoid the frustration that arises from the community when the questions they ask cannot be answered.

Recommendation

66. Reference to DPE conducting briefing sessions during the exhibitions period of an EIS should be deleted.

6.6 Integrated EIS and SIA

Guideline 6 does not clearly support the integrated assessment of environmental and social aspects to the same extent that the Draft SIA Guideline does. For example Guideline 6 identifies that the guideline should be read in conjunction with the other guidelines that provide detail about EIA, however the Draft SIA Guideline is only referred to as another relevant guideline.

The integration of social and environmental assessments is readily acknowledged as best practice by international bodies such as the International Association of Impact Assessment, and in practice has been part of many major mining project EIA processes in NSW for many years. Better integration of, and consistency with, the already published principles and practices in the draft SIA guideline is recommended.
Recommendation

67. Guideline 6 should clearly support the integrated assessment of environmental and social aspects to the same extent that the Draft SIA Guideline does.
7 Guideline 7 - Approach to Setting Conditions

Guideline 7 – Approach to Setting Conditions is broadly supported by the NSW mining industry.

7.1 Categories of conditions

While the categories of conditions provided in Guideline 7 cover the majority of conditions in SSD consents, they do not include conditions where the applicant is required to implement all reasonable and feasible measures to achieve a certain environmental outcome. An example of such a condition would be a condition to minimise the dust emissions of a development. In this case, the condition is not a performance-based condition as there is not a clear standard to be met, nor is it a prescriptive condition as the condition does not dictate a specific action be taken. These sorts of conditions are important to allow for flexibility in operating projects. It is recommend that an additional category of condition be added to account for ‘Measures based conditions’, being conditions where proponents are required to implement reasonable and feasible measures to achieve a certain environmental objective e.g. minimise off-site odour, fume, spontaneous combustion, dust emissions etc. This would also include conditions such as ‘The applicant must ensure that all reasonable and feasible avoidance and mitigation measures are employed so that particulate criteria do not exceed...’.

Recommendation

68. Guideline 7 should include a further type of condition: ‘measures based conditions’, which would cover conditions where the proponent is required to implement all reasonable and feasible measures to achieve certain environmental outcomes.

7.2 Role of other agencies in the setting of conditions

It has become a standard practice for other government agencies to recommend conditions of consent in their submissions on a development application. Whilst some of these conditions relate to that particular agencies’ role – for instance in the case of the EPA, noise or dust conditions - others fall outside that particular agencies’ role and/or are conditions that are more appropriately suited to be included in another form of approval, for example an Environment Protection Licence. Government agencies should be specifically directed in the Guidelines to provide conditions that relate only to the particular issues that fall within that particular agency’s statutory responsibilities and that are appropriate for inclusion in a development consent.

Recommendation

69. Guideline 7 should direct other agencies to provide conditions that relate only to the particular issues that fall within the agency’s statutory responsibility and that are appropriately conditioned rather than dealt with by another form of approval.

7.3 Application to modifications of existing development consent

Guideline 7 is silent on how the guideline is to be applied to applications for modification of existing development consents or project approvals (that have been granted prior to commencement of the Guidelines). For example, is it the Department’s intention that in determining an application to modify a development consent that it will ‘modernise’ conditions of consent at that point so that the conditions are in the form prescribed by the Guideline? Additionally, will a proponent be expected to prepare a project description at the time of seeking to modify a project that captures the project (as currently approved) as well as the proposed modification?
Retrospectively application of the Guidelines to existing development consents or project approvals is likely to be problematic and may cause proponents significant operational issues if existing conditions of consent are modified in a significant way. Proponents should not be required to prepare project description chapters for projects that are the subject of existing approvals which are subject to a ‘generally in accordance’ condition.

Guideline 7 should specifically state that it applies only to development consents granted after the commencement of the Guideline and modifications of those consents. The only exception to this should be if the proponent elects to ‘opt in’ to the Guideline and seeks to modify its existing conditions of consent/approval to be consistent with the Guideline.

Recommendation

70. Guideline 7 should not apply to modifications of consents that exist at the time of the commencement of the Guideline, unless the proponent elects to ‘opt in’.

7.4 Model conditions

The Consultation Report states that ‘model conditions of consent will be developed for each of the condition types. However, conditions will need to be tailored to address specific issues identified in the EIA.’ The draft model conditions should be developed in consultation with industry.

Recommendation

71. DPE should consult with industry on the draft model conditions.

7.5 How is a determination made?

Section 2.1 of Guideline 7 is confusing and not reflective of current practice. The section states that where the decision maker is the Planning Assessment Commission (PAC) DPE’s Assessment Report will not “contain any recommendations”. The section is silent on draft conditions, but states that where the Minister of a delegate within DPE is the decision maker recommended conditions are included. We understand that current practice of DPE where the PAC is the decision maker is to indicate whether the project is approvable or not and where it is considered approvable provide draft conditions. Section 2.1 should be amended to reflect current practice.

DPE has commissioned an independent report into Assessment Reports and current practice should not change until after the recommendations of that review and DPE’s response is published.

Recommendation

72. Amend section 2.1 of Guideline 7 to reflect current practice with regard to the DPE assessment report where the decision maker is the PAC – i.e. the report states whether the project is approvable, and if so on what conditions.

7.6 How to select appropriate performance based criteria and mitigation measures

The general approach set out in the introductory paragraph of section 5.5.2 is appropriate however the following note is included:
‘Note: Proponents are encouraged to provide the details of any management-based measures and monitoring and reporting protocols in EIA documentation to provide greater transparency and certainty to regulatory agencies, the community and other stakeholders.’

While it is appropriate for the EIS to demonstrate that performance criteria can be achieved, care needs to be taken that the particular management-based measures are not prescribed as this could operate as a constraint to future adoption of improved processes. Accordingly, the EIS needs to allow for alternate processes to be developed/adopted in the future rather than be locked in to one approach for the life of the development.

Figure 3 requires clarification. Box three of Figure 3 indicates that where there is a ‘known best practice technology, design or management approach that best mitigates the impact’ the response is to identify prescriptive measures. However the identification of such an approach would seem to sit more comfortably as the way in which a proponent will achieve the performance criteria for a performance measure, which is the response to box 1. Figure 3 needs to be clarified so that proponents can understand what types of impacts will require a prescriptive response.

**Recommendation**

73. Remove the note at the end of section 5.5.1 of Guideline 7.
74. Clarify how impacts drive particular conditions in Figure 3 in Guideline 7.

### 7.7 Duplicative conditions

Guideline 7 should direct that where conditions are duplicative, and designed to achieve the same outcome, the subordinate condition should not be made. For example where there is a condition on the noise levels permissible at the boundary of the project, there is no reason to impose a specific condition level condition at a processing plant. This type of subordinate condition restricts how the mine achieves the outcome desired.

**Recommendation**

75. Guideline 7 should state that where there is a general outcome based condition that subordinate conditions that direct how those outcomes are to be achieved should be minimised.
8  Guideline 8 - Modifying an Approved Project

Guideline 8 – Modifying an approved project is probably as helpful as it can be given that the test in section 96 of the Environmental Planning and Assessment Act 1979 (EP&A Act) needs to be considered in the circumstances of the particular project. The example of the quarry provided in section 4.2.2 is overly simplistic and does not adequately discuss the elements of the development to be assessed to form a view as to whether a development as modified will be ‘substantially the same’.

8.1  Changes within the terms of the approval

While this section of the Guideline 8 is called ‘changes within the terms of approval’ it largely deals with changes that are not within the terms of the approval. It would be of greater assistance to provide guidance on changes that would be within the terms of the approval, in particular:

- Those consistent with the EIS
- Within the maximum parameters and the performance based conditions.

**Recommendation**

76. Section 3.1 of Guideline 8 should provide a greater level of guidance to assist proponents to identify where a change will be within the terms of an approval.

8.2  Type 3 modification applications

Section 6.1.3 provides for an “environmental report” instead of a scoping report, to be prepared in the scoping of a Type 3 modification. The change in terminology is not explained. The section states that ‘the report will be used by DPE as the primary document for assessment of the modification application’. However section 7.5 provides for an Environmental Assessment to be prepared. The roles of these documents need to be clarified.

Section 6.1.3 provides that the Environmental Report should identify and discuss the level of assessment and mitigation measures proposed to manage impacts. If this is a scoping document and an Environmental Assessment is to be prepared:

- It is not clear what level of assessment means
- It is not clear why mitigation would be set out in the Environmental Report rather than the Environmental Assessment.

While Guideline 8 appears to be providing the structure for a less onerous form of assessment than required by a new SSD application, the purpose and interaction of the required documentation needs to be made clearer.

**Recommendation**

77. Guideline 8 needs to be amended to provide greater clarity around the purpose the Environmental Report and Environmental Assessment in a Type 3 Modification application.

8.3  Modifications that require SEARs

Guideline 8 indicates that some modification applications will require SEARs. DPE should provide guidance on what types of projects will require SEARs.
Recommendation

78. Guideline 8 should provide an indication of the types of modification applications that will require the issuing of SEARs.
9 Guideline 9 – Peer Review

Guideline 9 – Peer Review is generally a good summary of the process applied. The Guideline provides an opportunity to provide guidance to government agencies and the PAC about the use of peer review, which could reduce the duplication of peer review on an issue by agencies and the PAC.

9.1 Objectives of the peer review

Guideline 9 should set out the objectives of a peer review and these objectives should define the engagement of the peer reviewer on a project. Those objectives should include:

- A review of whether the assessment method, process was reasonable and appropriately applied
- Where the SEARs state a method/process/policy to be followed in undertaking the assessment a review of whether this has been appropriately applied

The Guideline should state clearly that undertaking a new assessment is not to role of the peer reviewer.

Recommendation

79. Guideline 9 should set out the objectives of peer review and these should define the engagement of the peer review.

9.2 Timing of peer review

The peer review process has the potential to significantly delay the assessment of a project. DPE and other government agencies need to consider the issue of peer review at the earliest opportunity. The Guideline should provide make it clear to DPE and other agencies that decisions on peer review should be made where possible at the SEARs stage, and ideally not later than the adequacy stage (NSWMC proposes the reintroduction of a formal adequacy review – see section 5.1 of this submission).

Peer reviews need to be completed before a project is referred to the PAC as failing to do so causes confusing and uncertainty and ultimately results in further delay.

The time taken to complete peer reviews commissioned by DPE or government agencies should be considered time in government hands for the measuring of assessment timeframes. Careful consideration of the scope and management of the process should be undertaken by the commissioning agency to ensure that the review is delivered on time.

Recommendations

80. Guideline 9 should make it clear that there is a presumption in favour of identifying peer review at the SEARs stage and no later than a new proposed adequacy stage.

81. Guideline 9 should:
   a. State explicitly that where DPE or an agency commission a peer review, the time to undertake the review is time in government hands.
9.3 Reducing multiple peer reviews on the same issue

While it is acknowledged that it may be appropriate for DPE and/or the PAC to retain their own expert for a peer review process or advice in addition to any peer review process commissioned by the Proponent, DPE should avoid a situation where both DPE and the PAC retaining different experts in relation to the same issue.

Many mining projects have had at least three peer reviews (one for the proponent and one for each of DPE and PAC) of groundwater impacts in addition to separate consideration of groundwater impacts by the Commonwealth Independent Expert Scientific Committee and WaterNSW. The result of such a proliferation of reviews does not necessarily provide further certainty to the assessment of the issue and instead may simply result in further uncertainty due to each of the reviewers having different preferences regarding modelling inputs and approaches. Multiple reviews also added significant time and expense to the assessment process.

This level of review is considered to be unwarranted and could be reduced by DPE developing a protocol with the PAC regarding the process of peer review. This protocol could be referenced in the Guideline. Ideally, a single peer review of any studies, whether retained by the Proponent or an agency or undertaken internally by an agency specialist should be sufficient for most, if not all issues.

Recommendation

82. DPE as the lead agency for development assessment should consult with the PAC to develop a protocol on the commissioning of peer reviews that aims to reduce duplication of peer reviews by the government/delegated decision maker.

9.4 Other issues

These issues should also be addressed in a revised Guideline 9:

- 2.3.1 – Suitability of reviewer. This section should also identify that a reviewer will have a conflict where he or she is concurrently involved in the assessment of a project that might have impacts that are considered cumulative impacts of the project to be peer reviewed.

- 2.3.3 – Review reporting. This section should include reference to the overall intent of the peer review, which should be of ensuring that the overall findings of the assessment are sufficiently robust and representative of what would be expected for a project of the type being assessed.

Recommendations

83. Section 2.3.1 of Guideline 9 should identify as a conflict working concurrently on a project which might have cumulative impacts with the peer reviewed project.

84. Section 2.3.3 of Guideline 9 should refer to the overall intent of the peer review.
References

Appendix A – Examples of engagement plans
4.0 Stakeholder Engagement

4.1 Authority Engagement

The engagement process for the MCCO Project has commenced with initial briefing meetings held with relevant government agencies. These meetings introduced the MCCO Project, discussed the approvals process and sought feedback on relevant issues to be considered in the EIS. The following NSW Government agencies have been briefed on the MCCO Project:

- Department of Planning and Environment (DPE)
- Department of Trade and Investment, Division of Resources and Geosciences (DRG), and
- Muswellbrook Shire Council.

A Conceptual Project Development Plan (CPDP) meeting was held with DRG on 17 July 2017.

The next phase of the consultation process is the lodgement of this PEA with DPE. Following the lodgement for the PEA, DPE will provide Mangoola Coal with the Secretary’s Environmental Assessment Requirements (SEARs) for the MCCO Project.

Further key agencies to be consulted for the MCCO Project will include:

- Environmental Protection Agency (EPA)
- Office of Environment and Heritage (OEH), including the Heritage Branch
- Department of Primary Industries - Water (DPI – Water)
- Roads and Maritime Services (RMS)
- Department of Primary Industries, including Agriculture NSW and Fisheries NSW
- Crown Lands, and
- Commonwealth Department of the Environment and Energy (DoEE).

Consultation with each of these key agencies and any others specified in the SEARs will be undertaken throughout the preparation of the EIS.

4.2 Community and Other Stakeholder Engagement

A comprehensive Stakeholder Engagement Strategy has been developed for the MCCO Project. The Strategy identifies the potentially impacted people or groups and other stakeholders relevant to the MCCO Project, the methods of engagement to be used to most effectively engage with these stakeholders, the timing of consultation and the feedback mechanisms required. Methods of engagement used to assist stakeholders to understand the MCCO Project are included within Appendix 3.

In engaging with stakeholders, Mangoola aims to:

- be proactive in its engagement with the community
• provide relevant information regarding the MCCO Project and opportunities for stakeholder input throughout the approval process

• be transparent and honest in dealings with the community, and

• utilise a range of engagement methods so that all stakeholder interests are considered and addressed in a timely manner.

The stakeholders relevant to the MCCO Project will continue to evolve as the assessment process progresses, with some of the key initial stakeholders to be involved including:

• local residents and landholders – identified for the MCCO Project as those with residences within approximately 4 km from the Proposed Additional Mining Area. The landholders and residents identified are within the Australian Bureau of Statistics (ABS) State Suburbs (SSC 2016 boundaries) of Mangoola, Manobalai, Castle Rock and Wybong, which is also the distribution area for Project related information such as community information sheets and meeting notifications

• internal stakeholders – including employees and suppliers

• Aboriginal groups including Traditional Owner groups and the Local Aboriginal Land Council

• wider community individuals and groups – including tenants on mine owned land, interested residents in the wider community and the Mangoola Community Consultative Committee (MCCC)

• community service providers

• business and industry – including customers, business chambers, other nearby proposed or active major developments such as coal mines, and

• public infrastructure owners (e.g. roads, powerlines etc.).

Further to the above, Mangoola also has a consultation strategy in place for its exploration activities within the AL9 area following DRG guidelines. This strategy has been in place for the duration of the exploration program and has involved keeping land holders up to date on the exploration activities and Mangoola’s investigations for future mining potential.

A preliminary social profile in relation to the stakeholders and locality that may potentially be affected in social terms is provided in Appendix 3. The engagement process for the MCCO Project will be ongoing throughout the Project, with key stages which align with the key milestones of the environmental assessment process. The key stages of the consultation process for the MCCO Project are outlined below:

• **Stage 1 – PEA Stage.** This stage is complete and involved preliminary contact with the local community via a briefing to the CCC, phone calls and face to face meetings with nearby land owners, and the distribution of a Project Community Information Sheet providing an overview of the MCCO Project. 24 face to face land holder meetings have been held by the MCCO Project team to date. These meetings involved discussing the MCCO Project and asking about key issues to be considered in the assessment process. The Community Information Sheet provided MCCO Project personnel contact details for the community stakeholders interested in holding further discussions with Mangoola. This Community Information Sheet was also distributed to a total of approximately 135 residences within the suburbs of Mangoola, Manobalai, Castle Rock and Wybong.
• **Stage 2 – EIS & SIA Development.** This stage will involve engagement during the refinement of the conceptual mine plan and the preparation of the EIS for the MCCO Project. There are two main purposes of this stage. The first is to continue and build on engagement commenced within Stage 1 as part of a thorough Social Impact and Opportunity Assessment (refer to Section 7.1), including face to face meetings with community and agency stakeholders as necessary, meetings / workshops on key issues and provision of updated project information as it is available via mechanisms such as the Mangoola Coal website, additional Community Information Sheets and open days. The second main purpose is to commence engagement with Aboriginal stakeholders and Knowledge Holders as part of the Aboriginal Cultural Heritage Assessment process (refer to Section 7.9).

• **Stage 3 - Submission and assessment.** This is the final stage of consultation prior to determination of the development application for the MCCO Project and will involve consultation during the EIS public exhibition phase and subsequent assessment and approval process. The main purpose of this stage of consultation will be to respond to issues raised during the public exhibition phase. Note that if approved, engagement will continue into operations in accordance with current site procedures, taking into consideration any outcomes of the assessment process.

### 4.3 Social Impact Scoping

Potential social impacts that may arise due to the MCCO Project have been identified through review of relevant literature, including the SIOA undertaken as part of the assessment for Project Approval 06_0014 Mod 6 (Coakes Consulting 2013), consideration of ongoing operational engagement activities and through the direct stakeholder engagement undertaken specifically for the MCCO Project as detailed within Section 4.2. Potential social impacts are presented below.

_In 2016, DPE released the Social Impact Assessment: Draft guidelines for State significant mining, petroleum production and extractive industry development (draft SIA Guideline DPE, 2016). This draft SIA Guideline has been considered in the completion of the scoping of social impacts for this PEA, including the completion of a preliminary significance assessment of potential social impacts which is included in Appendix 3. Appendix 3 also includes further consideration of mitigation measures as per PEA performance objectives 3 and 4 in the draft SIA Guideline._

Potential social impacts identified in the scoping phase that will be subject to further assessment as part of the SIOA include:

- Noise emissions (including vibration & blasting)
- Air emissions
- Impacts on property values
- Impacts associated with traffic and roadworks
- Population change
- Enhanced community contributions
- Community sustainability and sense of place.
- Cumulative impacts with other mining projects
- Light spill / visual amenity.
4.0 Stakeholder Consultation

4.1 Authority Consultation

The consultation process for the Project has commenced with initial briefing meetings held with relevant government agencies. These meetings introduced the Project, discussed the approvals process and sought feedback on relevant issues to be considered in the EIS. The following NSW Government agencies have been briefed on the Project:

- Department of Planning and Environment (DPE);
- Department of Trade and Investment, Division of Resources and Energy (DRE); and
- Singleton Council.

A Conceptual Project Development Plan (CPDP) meeting was held with DRE on 25 March 2015. A letter was received from DRE on 29 June 2015 confirming that the Division considered the coal deposit a significant coal resource and provided comment on issues to be considered in the EIS.

There has also been consultation with the Office of Environment and Heritage (OEH) in relation to the biodiversity assessment, as discussed in Section 7.7.

The next phase of the consultation process is the lodgement of this PEA with DPE. Following the lodgement of the PEA, DPE will provide United with the Secretary’s Environmental Assessment Requirements (SEARs) for the Project.

Further key agencies to be consulted for this Project will include:

- Environment Protection Authority (EPA);
- OEH, including the Heritage Branch;
- NSW Office of Water (NOW);
- Mine Subsidence Board (MSB);
- Roads and Maritime Service (RMS);
- Department of Primary Industries including Agriculture NSW and Fisheries NSW;
- Crown Lands; and
- Commonwealth Department of the Environment (DoE).

Consultation with each of these key agencies will be undertaken throughout the preparation of the EIS.
4.2 Community and Other Stakeholder Engagement

A comprehensive stakeholder engagement strategy has been developed for the Project. The strategy identifies the stakeholders relevant to the Project, the methods of engagement to be used to most effectively engage with these stakeholders, the timing of consultation and the feedback mechanisms required.

In consulting with stakeholders, United Collieries as Project proponent aims to:

- be proactive in its engagement with the community;
- be transparent and honest in dealings with the community; and
- utilise a range of consultation methods so that all stakeholder interests are considered and addressed in a timely manner.

The stakeholders relevant to the Project will continue to evolve as the Project and assessment process progress, with some of the key initial stakeholders to be involved including:

- local landholders – including rural landholders and residents of the villages within the local area, being Warkworth, Jerrys Plains, Bulga Village and Maison Dieu (refer to Section 6.1.3);
- community groups – including the United Community Consultative Committee (UCCC) and Wambo Community Consultative Committee (WCCC);
- Hunter Valley Gliding Club, located adjacent to the north east boundary of the Project Area;
- environmental groups;
- Aboriginal stakeholder groups;
- other mining operations – including Coal and Allied; and
- service providers and infrastructure owners – TransGrid, Ausgrid, Australian Rail Track Corporation (ARTC), Telstra and RMS.

The consultation process for the Project will be undertaken in stages which align with the key milestones of the environmental assessment process. The key stages of the consultation process for the Project are outlined below:

- **Stage 1** is complete and involved preliminary contact with the local community via a newsletter providing an overview of the United and Wambo Joint Venture. This newsletter provided Project personnel contact details for community stakeholders interested in holding further discussions with United and Wambo. This newsletter was distributed to local communities including Warkworth, Jerrys Plains and Bulga.
• **Stage 2** includes consultation during the refinement of the concept mine plan and early phases of the preparation of the EIS for the Project. The main purpose of this stage of consultation is to inform stakeholders of the Project and the proposed environmental assessment process, to identify the issues that the stakeholders would like addressed in the refinement of the mine plan and development of the EIS and to identify how they would like to be engaged regarding the Project. Both Stage 1 and 2 have sought stakeholder feedback on aspects of the Project design, including input on the communities preferred final land use for the Project Area. Stage 2 consultation has included one on one meetings with landholders surrounding the Project Area, a community information session held at the Jerrys Plains Community Hall and the distribution of a second community newsletter.

• **Stage 3** will involve consultation with stakeholders following the substantial completion of the concept mine plan studies and the environmental studies for the EIS. The main purpose of this stage of the consultation program is to update stakeholders on the status of the Project, provide feedback on the results of the environmental studies and to provide for stakeholder input into the formulation of management and mitigation measures.

• **Stage 4** is the final stage of consultation and will involve consultation during the EIS public exhibition phase and subsequent assessment and approval process. The main purpose of this stage of consultation will be to respond to issues raised during the public exhibition phase.