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Resources Sector Regulation
Productivity Commission
Locked Bag 2
Collins Street East
Melbourne VIC 8003
www.pc.gov.au/resources

Dear Sir, Ms

PRODUCTIVITY COMMISSION INQUIRY INTO RESOURCES SECTOR REGULATION

Thank you for the opportunity to contribute to the Productivity Commission Issues Paper (September 2019) on Resources Sector Regulation.

Peabody Australia (Peabody) is a subsidiary of Peabody Energy Corporation, which is the world's largest private-sector coal company, serving power and steel customers in more than 25 countries on six continents.

Peabody's Australian operations are located across Queensland and New South Wales and include a diverse product range of coal, much of which is exported through various coal ports. In 2018, Peabody's Australian operations achieved total sales of 27.3 million tonnes primarily to steel producers in Japan, Europe, Taiwan, Korea, India and South America, as well as to electricity generators in Australia and Asia.

This submission focuses on our Australian operations, where we directly employ 2,660 workers predominantly in regional communities – including 40 trainees and apprentices. Peabody supports Australian businesses and in 2018, the company contributed AUD \$2.567 billion in wages, royalties and supplier costs to the Australian economy.

Peabody welcomes the review of the resources sector regulations and the Federal Government's commitment to streamline regulations in the sector. We recognise the importance of ensuring that resources projects are transparently and efficiently assessed while upholding robust environmental standards. But we also strongly support the Government's regulatory reform agenda which includes improving the efficiency of environmental approvals to reduce the regulatory burden on business.

The review of regulation of the resources sector is timely given a recent number of decisions relating to mining projects, particularly in NSW, which have created uncertainty for Peabody and the broader industry.

Thank you for the opportunity to input into this valuable inquiry. Please find attached a submission that details our response to the issues paper.

In summary, Peabody supports environmental regulation that is both efficient in its operation and effective in achieving the desired outcomes. We are not seeking to remove or diminish environmental standards or community safeguards. Rather, we are seeking to create a more efficient process in meeting regulatory objectives through the removal of unnecessary prescription and processes.

We welcome the opportunity to provide more detail on any of the above or offer a site visit to commissioners at any of our operations.

Yours sincerely

Janette Hewson
Vice President Government Relations
Peabody Australia

Productivity Commission Study on Resources Sector Regulation

1. About Peabody

Peabody is a global company with a strong commitment to Australian mining regions. We continue to look for opportunities to invest in Australia by expanding our existing operations or other opportunities.

Peabody holds itself to high standards of environmental, social and corporate responsibility and has a proud history of operating ethically, in Australia and overseas. We respect and understand the need for robust and rigorous approvals processes and strict regulation.

2. Response to issues paper

Mining is subject to more regulatory requirements than any other Australian industry, covering all stages of industry activity – from grant of tenure, exploration, extraction, processing, transportation, rehabilitation and mine closure through to relinquishment of tenure.

Effective regulation is essential for supporting competition and the community by promoting growth in productivity and living standards. Regulation is also important to protect heritage, biodiversity and other environmental values by instilling community confidence in state and federal governance. Yet regulatory processes need to meet these goals in an efficient and effective manner.

As a member company of the Minerals Council of Australia (MCA), NSW Minerals Council (NSWMC) and Queensland Resources Council (QRC) Peabody supports submissions by these organisations.

We reiterate the key points outlined in the industry associations' submissions, notably:

- Peabody supports the rigorous assessment of mining projects in Australia. However, this rigour must be applied fairly and with transparency to deliver confidence in the approvals processes.
- The company recognises the stress experienced by our communities – whose very existence depends on mining – as a result of protracted approval processes in Queensland and NSW.
- We have observed a reluctance in Government departments to make decisions and changing of the goal posts through the approval period leading to delays. These delays come at a great cost to business, communities and governments [2014 Qld Competition Authority report estimates \$300,000/day] and should be the exception, rather than the norm.
- Peabody supports any efforts to remove duplication between jurisdictions and streamline approval processes.
- Peabody calls on all levels of Government to ensure Regulatory Impact Statements are undertaken on all new regulation before its implementation, to understand the broader implications on the industry.
- Peabody remains deeply concerned about the level of post-approval uncertainty for projects, which is underpinned by an objection process which operates independently and without transparency.

Outlined below are Peabody's key comments regarding problems with regulatory design and practice in Australia. These reflect the issues detailed in the MCA submission.

Regulatory objectives are not clearly defined – in recent years there has been a range of regulation and associated processes introduced to reduce political pressure or in response to public perception, including a growth of independent panels and processes. When regulatory objectives are not clearly defined from the outset, regulators and independent panels are left to interpret requirements inconsistently and potentially change scope and expectations for the regulatory entity.

Regulatory creep – regulatory creep is an ongoing concern in the regulation of the mining industry. Regulation has been increasingly used to resolve public concerns, without consideration of other potentially more fit-for-purpose options such as co-regulatory approaches.

Regulation is overly prescriptive – regulation and policies for project assessment are often overly prescriptive and may unnecessarily restrict options available to both the regulator and the project in developing a fit-for-purpose response. This prescription results in a focus on process rather than the outcomes sought by the regulation or policy.

Regulations are not subjected to effective review processes – while regulations are periodically reviewed, the reviews tend to focus on process and future reform, not whether the regulation has resolved the problem sought to be addressed. In addition, a number of third party reviews of regulation have been undertaken in recent years (by independent assessors and organisations including the Productivity Commission). Despite these reviews being extensive, once completed the review outcomes are rarely implemented.

3. The NSW Planning Assessment System

In particular, we support the NSWMC's comments regarding the NSW Planning Assessment System and the high level of risk that resources projects face as a result of the regulatory framework and the planning system.

Peabody has experienced first-hand the flow-on impacts and presumably unintended consequences of elements of Australian regulatory framework, which have led to project and investment delays. We have current plans to extend the life of our three existing mines in NSW but have faced issues with critical permitting for each operation.

Included in this section are three Peabody case studies regarding the NSW planning assessment system. These examples are provided to the Productivity Commission to highlight the serious impacts that duplicated and complex regulation, combined with poor determination governance arrangements can have on investment.

Independent Planning Commission

NSW is the only jurisdiction to have an independent determination authority for State Significant Development projects. A number of recent determinations of mining projects by the Independent Planning Commission (IPC) has highlighted significant deficiencies and inconsistencies with the current assessment and determination process in NSW. There is clear duplication of assessment processes between the Department of Planning and the IPC which also has its own two stage assessment process within the already complicated system. There is often a lack of clarity on assessment standards and policies, with the IPC proposing new issues and standards for assessment that are outside existing NSW Government policy parameters, either during or towards the final stages of project assessment.

There are examples where the IPC has ignored the recommendations of the Department of Planning and either refused projects, or imposed conditions that were contrary to government policy.

Case study: United Wambo Project (Upper Hunter, NSW)

After more than 3 years of environmental assessment, the IPC approved the application for the United Wambo (a joint venture involving existing mines) with a condition that attempted to restrict trade with certain countries based on downstream greenhouse gas emissions which are generated in other countries. This condition was imposed despite the government explicitly advising the IPC in writing the approach being taken was inconsistent with existing government policy. By comparison, the Rix's Creek mining project was approved 3 months after United Wambo and did not include the same condition. This highlights the inconsistent approach being taken by the IPC.

Assessment timeframes

Analysis undertaken by the NSWMC indicates assessment timeframes for mining projects in the NSW planning system have increased. In the five years to 2014 there were five new greenfield resource projects assessed and four approved. The average assessment timeframe was just over 400 days. From 2016 there have been seven new projects assessed and four approved, with assessment taking over twice as long at almost 1000 days on average. These timeframes do not include the NSW Mining and Petroleum Gateway Panel process, pre-lodgement assessment requirements or Commonwealth related approval processes which all add further time.

There can also be significant delays in the granting of a Mining Lease as a post approval requirement. Peabody continues to be impacted by slow application processing times that well exceed the relevant key performance indicators (KPIs) of 85 business days for the processing of an exploration licence application and 45 business days for coal exploration licence renewals, coal mining lease applications and renewals, and coal assessment lease applications and renewals.

Case study: Peabody mining lease

- Wilpinjong (Mudgee, NSW) – State Significant Development approval April 2017, Mining Lease granted December 2018

Post approval uncertainty

In addition to the increased time and resources required to resolve post determination issues, the increased reliance on post approval requirements is causing significant uncertainty for operations, particularly where 'incremental approvals' are required for projects to continue operating. For example, certain projects in water catchments in NSW, require separate approvals for each individual longwall panel before mining can continue, which includes referral to an independent panel. There are examples where final approvals have only been granted a matter of days or weeks before longwall operations would otherwise halt.

Case study: Metropolitan (Illawarra, NSW)

Peabody's Metropolitan mine has been operating in the region for 130 years, producing metallurgical coal for domestic and export steel customers. The mine directly employs more than 400 workers, it supports hundreds of local businesses and supplies the local steelworks that rely on the mine's supply of coal.

In 2017, the NSW Government established an Independent Expert Panel for Mining in the Catchment to undertake a review into impacts of longwall mining in the area.

While the panel concluded the loss of water from mining under the catchment was 'negligible', it endorsed the NSW Department of Planning, Industry and Environment's (DPIE) approach to piecemeal approvals of future longwall panels through the Extraction Plan process.

This incremental approach presents an ongoing approval risk and creates a high level of uncertainty about future capital investment at Metropolitan.

Following a rigorous environmental assessment and approvals process, in June 2009, the NSW Government approved the Metropolitan Coal Project to extend the life of the mine for a further 23 years. We accept the need to secure secondary approvals for the approved Project; however, the incremental approval process is unnecessarily complex, adding time, uncertainty and risk for our business.

There are critical time factors involved in making mine planning and operational decisions that must be considered, and receiving 'eleventh hour' approvals, only granted immediately before they are required, results in significant uncertainty and costs, including stand-down time, for mining operations.

We support an approvals process that provides a sensible balance of delivering certainty for our business while ensuring the DPIE is equipped with up-to-date information and monitoring results.