

Ms Carolyn M^cNally
The Secretary
Department of Planning & Environment ,
GPO Box 39
Sydney NSW 2001

15th February 2018
PO Box 871
TAMWORTH, NSW, 2340

Dear Ms M^cNally,

Re: Feedback on Discussion Paper to Improve Rehabilitation Outcomes for Major Mining Developments

The Association of Mining & Energy Related Councils of NSW ('AMERC') welcomes the opportunity to provide feedback to the Department of Planning & Environment ('DPE') regarding the Discussion Paper to Improve Rehabilitation Outcomes for Major Mining Developments ('Paper') dated November 2017.

A. About the AMERC

The AMERC (then AMRC) originated in 1978 with several Councils recognising that Local Government Areas associated with coal developments would benefit from a co-ordinated approach when liaising with proponents and the NSW State Government. In 1993 the scope broadened to include metalliferous mines. In 1999 it expanded further to represent Local Government on all extractive industries, including unconventional gas and in 2017 added renewable energy projects to its remit. Currently there are 19 member Councils of the AMERC, most of whom are located in rural and regional areas of NSW.

B. General Comments: AMERC Members and Mine Rehabilitation

Local Councils are the sphere of government directly responsible for the daily governance of Local Government Areas. They strive to facilitate human endeavour that is sustainable environmentally, socially and economically. Often, they have to deliver services and facilities across vast distances and sparse populations. Thus, Councils are 'on the front line', interfacing with their communities and have a very good understanding of the local issues and challenges.

B.1 The Need for State Government Decisions on Major Mining Projects to Seamlessly Interlink with Local Government Planning

As you are aware Local Government is required under the Local Government Act to develop ten year strategic plans which then cascade progressively to detailed annual plans. The strategic planning is undertaken with considerable investment of time, effort and goodwill by the local communities and their councils. The community thus has strong ownership of this planning, giving rise to certain expectations.

When one considers the Hunter Valley Region, for instance, it is often disconcerting to local communities when case-by-case Major Project mining developments are approved by the NSW Government, with such decisions sometimes at odds with the expectations of the local population, given the collaborative decisions made in framing the local strategic plans. A strategic planning approach is urgently required for the Hunter Valley in particular, so the region can initiate parallel economies for the present, plus truly sustainable economies post coal.

Again in the Hunter Valley, communities seek a greater level of coherence, reflected in the community's concerns around final voids (currently there are 26 mine voids in the Singleton Council area alone), long term economic development and diversification. At present Local Government strategic planning under the Local Government Act seems to have to take a 'back seat' when the EP&A Act comes into play on major projects.

The AMERC thus recommends the Paper provide clear direction on how the different functions under the EP&A Act and the Local Government Act can be better reconciled, when it comes to mine rehabilitation and viable post-mining land use.

To this end the AMERC invites the Government to commit, prior to the next State Election in March 2019, to the timeframes and resources necessary to better co-ordinate strategic land use planning with SSD decision-making, especially in the Hunter Valley.

Once the strategic picture is clearly understood and deemed a key determinant, then a mining proponent can, at the project design and inception stage, undertake the planning and impact assessment against the desirable strategic outcomes sought and integrate these into the project.

B.2 Frequent Modifications to Existing Mines Adversely Impacting on Rehabilitation Progress

In the Hunter Valley over the past year there have been a considerable number of Modifications to existing projects. A consequence has been an increase in the area of exposed overburden and final void, leading to a backlog of rehabilitation work to be undertaken. Local communities are concerned that the Modification tactic is leading to 'death by 1,000 cuts', with the life of a coal mine rarely being concluded.

The AMERC urges the DPE to:

- a) impose much tighter requirements on when a 'Modification' is permissible. In our view many Modifications should be deemed new Development Applications that would allow a fresh, thorough, higher order assessment; and
- b) mining projects that seek Modifications should be required to deliver far higher standards of rehabilitation and at a far earlier stage.

B.3 Collaborative Dialogue to Plan 'Life After Mining'

Many across society are concerned at the inadequacy of the standard and timeliness of rehabilitation of mined-out areas and AMERC welcomes the DPE now reviewing the policies with a view to delivering better outcomes.

AMERC is of the view that it is in the mining sector's long-term interests that it significantly improves the rehabilitation processes and practices associated with mined-out areas and in delivering productive post-mining land uses.

What is critical, is to see by far a greater effort by the mining industry to engage collaboratively with the community in:

- a) how a mine site should be rehabilitated; and
- b) the land use for a closed and rehabilitated mine site.

In view of the above comments, AMERC encourages DPE to go even further with the reforms outlined in the Paper to better meet community expectations.

C. Specific Comments on Elements of the Discussion Paper

Below are comments made in relation to various parts of the Paper; hence are best read in conjunction with the document at hand.

1. Assessment Phase – General

1.1 Table 1: Are the draft policy principles for application to new State significant mining projects appropriate? (p 11)

1. The higher order objective for rehabilitation should be to 'avoid' the sterilisation of land rather than just 'minimise' it.

2a. Rather than just 'feasible', the rehabilitation and closure proposals 'must be in accord with Ecologically Sustainable Development (ESD) Principles and adoption of the Precautionary Approach'. 'Feasible' tends to be code for in the short term economic interest of the proponent and that is no longer appropriate.

2b. Disturbed areas: should be rehabilitated beyond 'safe and stable' to be 'environmentally and socially sustainable'.

3a. Rehabilitation and post-mining land use plans must be 'developed through a process of collaborative community engagement'.

3b. First bullet: post mining land uses should be consistent with ESD Principles.

3b.Third bullet: suggest the rehabilitation standards of neighbouring mines should not be a benchmark for how new mines ought to be rehabilitated and hence this point deleted. Historically, rehabilitation has typically left much to be desired.

3c. As per 2a above, rather than use the word 'feasibility' of proposed land uses, which tends to be code for cheapest economical option, suggest adopt the phrase 'the most environmental, social and economically sustainable for that landscape'.

3e. Suggest the wording for binding milestones be changed to 'binding environmental, social and economic milestones'.

3f. When discussing the assessment of 'costs', it is recommended the phraseology read an assessment of 'environmental, social and economic costs and benefits' of the progressive rehabilitation and related management.

1.2 Table 1: Are the draft policy principles for application to all (that is both new and existing) State significant mining projects appropriate? (p 11)

4b. Suggest progressive rehabilitation should 'deliver to a specified measurable outcome'.

5. Strongly endorse the public availability of mine rehabilitation plans.

6. Strongly endorse the proponent being responsible for meeting all costs associated with their rehabilitation obligations.

7. The assessment that mined-out land has been satisfactorily rehabilitated and is suitable for its designated post mining land use should be made by an independent third party, not the proponent. The report confirming same must be made publicly available.

1.3 Are there other policy principles that should be included? What are they?

As mentioned above, the ESD Principles and Precautionary Approach and collaborative stakeholder engagement should underpin the approach to mine rehabilitation and be front and centre as the approach.

AMERC also suggests that specific reference should be made to the fact that large scale mining often causes permanent, adverse impacts to surface and groundwater pathways and the ongoing availability of water to both local ecosystems and to local communities. Changes to water quality can include increased salinity, particularly in final voids but also as groundwater attempts to recover within the post-mining landscape. In certain situations, acid mine drainage can increase acidity and toxicity through dissolving heavy metals. Water draw down impacting local farmers is also a key concern. The water impacts are often a very significant issue and this point needs to be acknowledged and better addressed.

Mention should also be made of the fate of water licences held by miners post the operational phase. The on-selling of water licences at mine closure should be prohibited because mines will continue to 'take' water long after rehabilitation is complete, either through evaporation from final voids or leakage of groundwater from the disrupted and damaged aquifers.

In addition, AMERC believes core principles for both new and existing mines should include bonds or monies incorporated into the approvals to enable research, planning, works and promotion of the site post the mining land use. This shouldn't be left to local government and should be held until agreed land use is achieved.

AMRC also seeks clarification from the DPE regarding the land rating status of mined out land after mine rehabilitation. For rating purposes is its land use mining, wasteland, farming or other?

2. Assessment Phase – Final Voids (p 12)

2.1 Is the policy framework for determining the acceptability of final voids appropriate?

Suggested general comment to add: Mining proponents must engage collaboratively with local Councils and local communities to jointly develop the final landform and land use for a closed mine. On first principles, there should be no void unless there are exceptional environmental, social and economic benefits to retain them.

First bullet: Suggest the 'feasibility' of removing the final void be couched more definitively, say if the proponent wishes to retain the void then it 'must provide a comprehensive environmental, social and economic analysis, which includes clear evidence of collaboration with the local Council and local communities and that retaining a void is the jointly agreed best outcome'.

As mentioned in 1.3 above, water impacts are a key concern hence should be referenced in this section regarding voids.

2.2 A number of final landform options could be considered in a policy framework for the assessment of final voids. What are the benefits and costs of:-

- **Requiring final voids to be beneficially re-used?**

- ***Requiring backfilling of final voids in areas where the environmental and social costs would otherwise be too high?***

AMERC recommends that the default policy position should be there shall be no voids. Thus, if a proponent seeks to retain a void it must thoroughly document its case and engage collaboratively with communities and only if such engagement favours a void should it be contemplated.

In assessing the case for or against a void, it is critical that detailed research is undertaken to ascertain the future groundwater steady state equilibrium in the disturbed aquifers.

On this matter AMERC recommends an upfront bond for groundwater management and recovery should be held by the NSW Government until such time as groundwater has reached the approved steady state equilibrium. Clear regulations and guidelines should provide for the calculation method for the bonds and when this bond can be 'called in'.

2.3 Should other landform options be considered in a policy framework for the assessment of final voids? What are the benefits and costs?

Post mining land use plans could determine the future landforms/landscape to accommodate say pumped hydro or other renewable energy generation options (eg solar) and storage (eg battery) or some other appropriate major development. AMERC would like to see more effort and creativity required of the proponent by the planning and assessment system on such matters.

3. Assessment Phase – Consideration of Mine Rehabilitation in the Early Stages of Mine Planning (p 13)

3.1 What is the most effective way of improving consideration of rehabilitation and closure in the early stages of mine planning?

AMERC is of the view that:

- a) The Scoping Report and then the SEARS must include detailed, outcomes-based information on mine rehabilitation and post mining land uses. What is tabled at present is inadequate;
- b) In preparation of the Scoping Report the miner must engage with the community in a truly collaborative manner – starting in essence with a blank sheet of paper and then co-designing collaboratively what might be supported by the community; and
- c) The assessment process would be made more robust if:
 - the mine closure plan was developed prior to approval, based on a regional post mining land use strategic plan, the ability of the site to meet minimum standards of groundwater management, mine rehabilitation and closure, including no final void;
 - an independent economic assessment of the cost of the project that includes the cost of meeting the mine closure outcomes was undertaken by the NSW Government; and
 - a financial mechanism was implemented by the State Government to guarantee that the proponent will bear the full cost of the necessary rehabilitation.

4. Assessment Phase – Ensuring rehabilitation requirements are clear and enforceable (p 13)

4.1 What aspects of rehabilitation are appropriate to include as 'binding rehabilitation outcomes' (particularly for progressive rehabilitation)?

Mining companies appear to consistently underestimate the cost of mine rehabilitation and closure, resulting in environmental, social and economic costs being transferred to the community whilst the miner has maximised the profits.

Of major concern is that mines can avoid or delay rehabilitation responsibilities by entering an indefinite, and often undefined, 'care and maintenance' mode. Responsibilities during 'care and maintenance' tend to relate to keeping a site safe and stable, and avoid any need to undertake progressive or meaningful rehabilitation.

A decision to enter 'care and maintenance' can occur with no need for the proponent to provide certainty as to when or if they will recommence operations or close and rehabilitate the mine. This tactic can be employed as a means of avoiding rehabilitation.

Binding rehabilitation outcomes should include:

- a rehabilitation bond in the form of a security deposit that properly values the true costs of rehabilitation, that is, not just re-creating a final landform and providing revegetation but also quantifying the full cost of measures to ensure long term sustainability, including groundwater;
- an outcomes-based conditioning process for rehabilitation of biodiversity and groundwater, including:
 - i. what is the final landform and land use going to be and what new groundwater or biodiversity steady state is required to support this?
 - ii. what are the key phases of rehabilitation and when are key on-ground changes likely to be evident?
 - iii. what is the rate of recovery predicted and is the environment responding as expected?
 - iv. what intervals of monitoring are required to ensure the predicted recovery trajectory is being met?
 - v. how will deviations from the projected recovery be addressed and how will long term responsibility for recovery of the site, including the associated costs, be maintained?
 - vi. what will the proponent do to ensure that any future landowners and the public are kept informed of the rehabilitation process?

4.2 Are any other changes at the assessment phase required? What are they?

AMERC recommends there be explicit, measurable outcomes-based consent conditions regarding mine closure and rehabilitation. The frequency of independent environmental audits also needs to be increased. Rather than every three years, we suggest every two years. Three yearly is too big a time gap for projects that can have potentially major deleterious impacts on the environment and local communities.

5. Operational Phase – Regulatory processes to deliver required rehabilitation outcomes (p 15)

5.1 Are the proposals to improve the regulatory process once a mine has been approved appropriate?

The findings of deficiencies identified by the NSW Audit Office are noted and we hope planning reform will help to rectify many of them. AMERC recommends:

- Improvements to the environmental monitoring network implemented by the EPA in proximity to mine sites. This should include real time monitoring data being made readily accessible to neighbours;
- Improvements to the environmental monitoring network implemented by the mine proponent in proximity to mine sites. This should include real time monitoring data also being readily accessible to neighbours;
- More transparent, plain language, public reporting of monitoring data for noise, dust, blast fumes, surface water and groundwater;
- Conducting annual independent performance reporting during the mine closure and rehabilitation phases; and
- Significant increases in resourcing of the EPA & DPE for improving and upscaling compliance management.

5.2 Are any other changes at the operational phase required? What are they?

During operations, strong enforcement of consent conditions together with tough penalties for non-compliance is required by the broad society. AMERC is of the view that more effort is required in that regard to allow the community to have greater confidence that mines are complying with their consent conditions.

Unequivocally, financial responsibility for sound mine rehabilitation, consistent with community expectations and ESD Principles, must remain with the mine owner and tighter controls are required in this regard. Mining companies should be required to publish in their company annual reports fully audited statements on their financial liabilities arising from the implementation of the pre-approved mine rehabilitation and closure plans.

6. Post Closure Phase – Compliance management regarding adequacy of rehabilitation performance and release of miner from liabilities (p 17)

6.1 Are any other regulatory reforms required to the post closure phase? What would they look like?

AMERC suggests the Community Consultative Committee process be carried through beyond the end of operations to include the site rehabilitation phase.

6.2 Are there any other opportunities or challenges relating to mine rehabilitation and closure that should be considered?

The AMRC recommends the law be changed to allow the DPE to amend consent conditions once a major project is operational and it can assess actual performance. This move is necessary because the EIS modelling favours the proponent and there are financial benefits in predicting lesser impacts. The DPE should have a five to ten-year window to allow consent conditions to be reviewed and tightened (but not loosened) once a development becomes operational, and it can cross-check against performance.

D. Conclusion

The AMERC thanks you very much for the opportunity to provide feedback on these important matters. The Association values its role of participating in debate and discussion on relevant matters such as outlined in this Paper. To that end it would help us help the DPE even more effectively if you could provide feedback on the content herein. The AMERC would welcome the opportunity to meet and discuss matters.

ASSOCIATION MINING & ENERGY RELATED COUNCILS (NSW) INCORPORATED

If you have any queries regarding the above please don't hesitate to contact the Executive Officer of the AMERC Mr Greg Lamont on phone 0407 937 636 or email greg@yourexecutiveservice.com.au

Yours sincerely,

Peter Shinton
Chairman
Association of Mining & Energy Related Councils