



04 November 2020

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Dear Anthony

RE: Operational Rehabilitation Reforms public consultation

Hunter Valley Energy Coal (HVEC) welcomes the opportunity to review the proposed NSW Operational Rehabilitation Reforms as per the Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation 2020 including review of mining lease conditions relating to rehabilitation.

The Mt Arthur Coal (MAC) mine is owned and operated by Hunter Valley Energy Coal (HVEC), a wholly-owned subsidiary of BHP. MAC is located approximately 5 kilometres south-west of Muswellbrook within the Muswellbrook Shire Local Government Area in the Upper Hunter Valley of NSW. Mining commenced at MAC in the 1960's and the operation is currently approved to produce up to 36 million tonnes of Run of Mine coal per annum. HVEC and MAC hold thirteen mining leases, three exploration licences and two subleases for the MAC mining operation.

Each year, HVEC undertake rehabilitation activities at MAC directed by our Rehabilitation Strategy, Biodiversity Management Plan (BMP), Rehabilitation Management Plan (RMP) and the Mine Operations Plan (MOP) as required by the MAC Project Approval 09_0062 MOD1 (Project Approval)). Significant effort and resources are implemented to ensure the success of the progressive rehabilitation program at MAC, with HVEC conducting monitoring and review of rehabilitation and reporting on this rehabilitation in our Annual Environmental Review.

HVEC acknowledges the overall objective of the Reforms; to set clearer, more focused rehabilitation requirements throughout a mine's life, from the mine design stage to closure. HVEC are aligned with achieving this objective to ensure optimum environmental, social and economic outcomes for the community, NSW and mining proponents.

For NSW to remain a competitive destination for investment, the State must ensure there is a simplified and efficient rehabilitation framework that enables resource companies to deliver strong environmental, social and economic outcomes. The framework must focus on practical, achievable relinquishment of land to post mining land uses, and should also provide industry and the community with certainty so that investment achieves its maximum potential.

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HVEC supports, and has contributed to the NSW Mineral Council's submission as part of the Review of NSW Operational Rehabilitation Reforms. This being the case, this submission is focused specifically on additional items and opportunities regarding HVEC and MAC. HVEC also provided comment on the Rehabilitation Reforms in 2018 in relation to similar issues as listed below.

Duplication – ‘Form and Way’ Documents

The array of regulatory documents including the RMP required by the MAC Project Approval result in duplication and wasted resources.

While HVEC agree with the intent to change from a MOP to a RMP, which is separate from the Annual Rehabilitation Report and Forward Program, the ‘Form and Way’ documents which set out the mandatory requirements to meet obligations under the new conditions, do not solve the identified problem of duplication.

HVEC also has Project Approval conditions requiring a Rehabilitation Strategy, BMP and RMP. HVEC has worked with DPIE to establish the Rehabilitation Strategy as an overarching document for rehabilitation process and practices only. With this approach, the RMP should then contain detail specific to criteria rehabilitation techniques, research opportunities and the implementation of rehabilitation activities.

Unfortunately, agreement within the DPIE on this more logical and streamlined approach has yet to be achieved. This has resulted in a duplication of the Rehabilitation Strategy into the RMP (MOP), making both documents unnecessarily large and complex, with neither providing the clear direction that a Regulator, community member or mining proponent needs. Regulation of both documents becomes a challenge if the outcome of each is not specific. Now there is clear guidance on the RMP, and the Strategy only includes high level strategic standards and principles that are not replicated in the RMP, HVEC request resolution of this issue.

HVEC Project Approval conditions also require a BMP that include:

- Overall rehabilitation implementation for offsets;
- Short, medium and long term measures to manage remnant vegetation, and;
- Detailed performance and completion criteria.

Again, these requirements present a duplication of information that is contained in the RMP. HVEC has attempted to reduce the content of the BMP in liaison with OEH, without success. Further, the requirement to consult with Council complicates the intention of the document as without a specific guideline that states the limitations or connection to the RMP, duplication and confusion continues in relation to all rehabilitation documents. Each revision of the BMP results in the addition of more information. This process duplicates the RMP and can also contradict it. HVEC request that the RMP makes a formal connection to the BMP and clearly states what should not be included in the BMP.

HVEC request that the Resources Regulator focus on removing duplication of documents (rather than adding more documents) and make the accountability for regulation of activities associated with mining and rehabilitation very clear for each of these documents.

HVEC request that effective and timely progression of rehabilitation to completion certification or relinquishment be included as objectives that need to be achieved by the Reforms in order to reduce liability for the Regulator, community and mining proponents.

Annual Rehabilitation Report and Forward Program

The establishment of a Forward Program and an Annual Report as part of the Reforms is supported by HVEC. However HVEC are concerned that the number of Forward Programs and Reports submitted at similar times each year will not be suitably approved within the 30-day timeframe. The current Annual Environmental Review covers the Rehabilitation Reporting requirements and HVEC expect to continue to report within the existing reporting process. HVEC request confirmation that BHP will not be required to provide multiple reports based on the new reporting requirements.

HVEC currently pay an administration levy (worth millions of dollars) to the DPIE which was originally designed to provide the Department with the necessary resources to review and approve documents in a timely manner. Consideration needs to be given to the potential for delays to the approval of Forward Programs and the consequences of those delays. HVEC request a guarantee that all Forward Programs will be approved by the Department within the 30-day timeframe.

Final Land Use

Final land use is critical in mine planning and enables the operation to add Social Value via positive outcomes for the community in the longer term. While under the EP&A Act, the Resources Regulator can't necessarily approve alternative land uses, the end use of mining land must have flexibility and optionality for final land uses that will provide ongoing benefit to the community beyond the original land use.

In 2018, the ICMM closure working group met with Councillors in the Upper Hunter Valley who identified their preference for mining land that was NOT rehabilitated. The Councils preferences are for cleared land ready for industrial estate development. Mining proponents cannot be held to only one closure option. The best outcome for HVEC would for flexible Rehabilitation Reforms that allow Consents and the Reforms to work together towards outcomes beneficial for both the community and environment. At present, MAC is required to work within well-constructed Project Approval Conditions for Final Land Use that aim to provide good socio-economic outcomes for the region.

Closure / Rehabilitation Criteria

Closure / Rehabilitation Criteria are integral to regulating rehabilitation progress, achieving desired land use and for providing the community with a land use that best suits social and environmental outcomes. The Resources Regulator must ensure that the timing for, and detail of, these criteria are clearly represented in the Reforms.

Guideline Documents

As the Guideline Documents will ultimately be the "go to" for mining proponents implementing the Reforms, consultation is integral in their development. To ensure the desired Reforms are achieved in the allocated 12 month period, HVEC encourages the Resources Regulator to adhere to a strict schedule that allows for multiple revisions based on industry feedback.

Matters not relevant to the Operational Rehabilitation Reforms

Matters such as European or Aboriginal Heritage and offsets often have requirements based on agreements with other government departments, organisations or parties which are better placed to manage these requirements. With the exception of offsets, HVEC insists that heritage items are not assigned specified requirements that could conflict with these other parties and agreements.

Reporting Timing

A significant amount of resourcing is required to meet the multiple government requirements of mining regulation. Specific reporting alignment needs consultation with individual mining companies to realise a reporting outcome that is manageable and achievable. HVEC requests that the Resources Regulator consult directly with BHP to resolve this issue.

HVEC commends the improvement by the Operational Rehabilitation Reforms and appreciates the opportunity for consultation and feedback. In summary, reducing the number of documents that contain rehabilitation requirements would simplify the regulation of rehabilitation and make the outcomes clearer for the Regulator, community and mining proponents.

If you require any further information, please contact Luke Neil on [REDACTED]

Yours sincerely

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