

6 November 2020

Mr Tony Linnane
Resource Regulator

Dear Tony

RE: Singleton Council Submission to the Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation 2020 and associated Form and Way

The Singleton Local Government Area comprises over 92,000 hectares of coal mining lease and exploration land, making it one of the largest mining areas in New South Wales. The area of land attributable to mining related activities accounts for almost 40% of the total area of available land in the LGA (excluding National Parks and State Conservation Areas). As such, any reforms related to how land will be used post mining is important to the future development of the LGA.

The proposed Amendment aims to regulate the environmental management and rehabilitation of land that is affected by activities under mining leases granted through the *Mining Act 1992*. The aim is to condition mining leases to provide for the development and implementation of rehabilitation risk assessments, rehabilitation completion criteria, rehabilitation plans and reporting of rehabilitation activities. The proposed Amendment will include enforcement provisions regarding compliance with rehabilitation outcomes set out in mining lease conditions.

Prior to the commencement of mining, operators will engage with government and community to determine conceptual post mining land uses and develop rehabilitation management plans, usually as part of an Environmental Impact Statement to support the development application process. These plans establish conceptual rehabilitation outcomes for the site and set objectives that are agreed upon by the operator and government and translated into conditions of approval.

As mining is a temporary land use, it leaves behind a legacy of changing expectations for the subsequent re-use of land post mining. Activities associated with mining can generate impacts that limit the post mining use of land, including site access, water quality, soil stability, soil fertility, contamination, spontaneous combustion and safety.

Land use is established by the permissible uses set out in the definitions of the Standard Instrument Local Environmental Plan. Permissible uses depend on the zone and the land use objectives that have been established to support the development of land across the State. Most mining operations within the Singleton Local Government Area are located within land zoned RU1. This zone provides the following objectives:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.

- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

Permissible land uses include, amongst other things, agriculture; airstrips; Animal boarding or training establishments; aquaculture; bed and breakfast accommodation; camping grounds; caravan parks; cellar door premises; community facilities; crematoria; dual occupancies; dwelling houses; environmental facilities; extractive industries; farm stay accommodation; hazardous industries; heavy industrial storage establishments; highway service centres; information and education facilities; intensive livestock agriculture; offensive industries; plant nurseries; recreation areas; recreation facilities (outdoor); rural industries; service stations; truck depots; turf farming; veterinary hospitals. Each of these terms is defined and allows a suite of final land uses that a future landholder may seek to develop.

In the event the final land use is not permissible in the zone, the land will require rezoning (a process which can take many years) and will require assessment of, amongst other things, the strategic context and need for the development (in terms of its long term feasibility and viability), sustainability, suitability and, importantly, whether the final landform is capable of delivering the proposed final land use.

There is a need for long term strategies for post mined land, which hold sufficient flexibility to respond to changing community expectations as a mine progresses through its life and deliver land use planning outcomes that are consistent with the broader land use planning objectives for the Singleton LGA.

In terms of mining rehabilitation, Singleton Council primarily plays an advocacy role in relation to achieving sustainable rehabilitation outcomes and a responsive role in terms of managing land use on and around rehabilitated mining land. In addition to being safe and stable, community feedback is that rehabilitated mining land should be used for productive and beneficial purposes. Council has made numerous submissions on State significant development applications, mining operation rehabilitation management plans, rehabilitation strategies and rehabilitation objectives, outlining the need to ensure final landforms are designed with an identified and achievable end use in mind.

Council has reviewed the proposed Amendment and associated documents and makes this submission for consideration during the consultation process.

General Comments

Council welcomes the proposed requirement for mining lease holders to report rehabilitation activities on an annual basis through the rehabilitation portal. The reporting of rehabilitation in a consistent, open and transparent manner has been a community concern for many years. Should the proposed Amendment be formally adopted, public access to spatial data to enable informed land use planning to take place will be a significant step forward for industry and Government.

Council acknowledges that, in most cases, the final land uses for mining operations are defined at the development approval stage, through the *Environmental Planning*

and Assessment Act 1979. Final land uses at the Environmental Impact Statement stage of a development proposal are often vague, lack planning, are not linked to any defined land use, are generally not supported by feasibility studies and are often deferred to much later in the mine life, often within 3-5 years of closure. The lack of clarity at development approval stage means that it is not known whether final landform design will meet any current or future proposed land uses that, at the time of approval, may be possible on the site.

As identified above, any mine rehabilitation planning must be able to deliver a final land use and final landform that can achieve a post mining land use that is permissible, and be supported by a degree of assessment that ensures the success and sustainability of final landform outcomes. The proposed Amendments lack the relationship work needed to ensure that the designed post mining landform is suitable, sustainable, viable, feasible and achievable for any post mining land use.

To address this, the proposed Amendment should include a requirement for mining lease holders to align the post mining land use and post mining landform design with Local and Regional strategic land use planning documents, including, but not limited to, the relevant Regional Plan, the relevant Local Environmental Plan and any changes that may be required to those Plans to achieve a post mining land use that meets strategic land use planning outcomes.

Additionally, the proposed Amendments do not prescribe a point in time at which a mining lease holder is required to prepare a detailed mine closure plan. As the International Council of Mining and Metallurgy (ICMM) identifies in its *Integrated Mine Closure: Good practice guide*, integrated mine closure is *a dynamic and iterative process that takes into account environmental, social and economic considerations at an early stage of mine development*. Such an approach is considered international best practice and should be reflected in the regulatory amendments proposed.

Specific Comments

The proposed Amendment seeks to provide the legislative mechanism for the mining industry to provide an industry wide consistent approach to planning for closure, as well as ensuring the industry reports progress and outcomes in a consistent and transparent manner. Council supports the proposed amendments in this regard.

The proposed Amendments, however, are not clear as to the extent to which the rehabilitation risk assessment, rehabilitation management plan, rehabilitation outcomes and rehabilitation reporting align to strategic land use planning outcomes. The proposed Amendments provide significant autonomy to industry to define the rehabilitation risks, objectives and outcomes outside a land use planning framework. Council recommends that the proposed Amendment include alignment with strategic land use planning documents, including those prepared by a local council, to enable a direct line of sight between rehabilitation planning and land use outcomes.

The proposed Amendment does not include a definition for mine closure. Council considers this an important omission, as rehabilitation will be designed to meet a final landform and final land use outcome to enable the mining operator to relinquish the mining tenements. Council recommends that the proposed Amendments include a

definition for mine closure that incorporates the requirements for the final landform to meet a suite of potential final land uses, depending on the proposed zoning for the land post closure.

Form and Way: Rehabilitation Management Plan for Large Mines

The form and way focus on achieving one of two outcomes – agricultural or biodiversity. As such, objectives and completion criteria are aimed at measuring the success of achieving these outcomes. However, the rehabilitation objectives set out in conditions of approval require the Applicant to, amongst other things, *minimise adverse socio-economic effects associated with mine closure*. The rehabilitation objectives and outcomes must ensure consideration of these effects at all stages of the planning process and can only do so if identified final land use(s), aligned to a detailed final landform is defined and planned towards.

The rehabilitation risk assessment must also include consideration of a changing climate. In November 2020, AdaptNSW released the Hunter and Central Coast Enabling Regional Adaptation report setting out the roadmap to adaptation required for a changing climate. AdaptNSW project that the region will experience, amongst other things, increased heat, increased hillslope erosion, changing soil properties, increase extreme rainfall events, decreasing rainfall recharge, increased drought and increased fire weather. Given the time to final rehabilitation likely to be experienced for mining operations, these changes must be assessed and adaptively managed to ensure final landform and final land uses can be achieved. Adaptive management strategies must include the manner in which the mining operation will change to take these impacts into consideration.

Section 6.2 of the form and way does not provide for the relationship between the phases of rehabilitation and the final land use. Council considers that all phases of mining and rehabilitation must have line of sight to the final outcomes, to ensure success can be measured and reported against a known set of outcomes. More specifically, section 6.2.1 and section 6.2.2 do not include consideration of the progressive void development during mining. It is the mining phase of the void that will define its finality. As such, specific operational considerations for water quality, water quantity, highwall stability, geochemistry, geology and other aspects affecting the final use of a void, must be included in the operational phase and decommissioning phase of mining.

Section 6.2.3 does however include consideration of conceptual issues associated with final voids. Council considers that these requirements should take place earlier in the mine life, as early as possible, to enable adequate planning timeframes to take place, particularly when predicted outcomes are not realised. Studies to determine final void water balance, groundwater infiltration and losses, water quality, geotechnical stability and, importantly, time to equilibrium, need to be clearly understood at the approval stage, and if not, then in the first rehabilitation plan required for the mining operation post approval.

Section 9 should include a section on land use research that includes consideration of what, if any, permissible uses can be undertaken on the site (taking into consideration the permissible uses defined in the relevant LEP), the ability of the final landform to

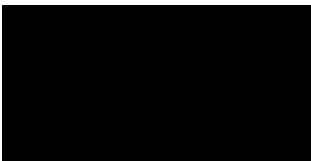
achieve these uses, the ability of the final landform as designed to meet the proposed final land use in the development consent (including consideration of the need for the use against other existing or proposed uses in the vicinity, the feasibility of such as use against the designed landform, the strength/consolidation of the final landform to achieve the land use, the suitability of the landform for the use, and the long term sustainability of the landform to ensure the land use can be sustained into the future). Completion criteria aimed at achieving these outcomes must also be a requirement of any rehabilitation management plan. Research should not be limited to establishing whether a final landform is safe, stable and non-polluting.

Closing Comments

Overall, council supports the proposed Amendments as a step forward to improving consistency and transparency on rehabilitation planning and reporting, and appreciates the Resource Regulator responding to council's submission.

I would like to thank the Project for the opportunity to provide comment on the proposed Amendments. Should you have any questions or comments, please contact Mary-Anne Crawford, Manager Development and Environmental Services on 02 6578 7290.

Yours faithfully



Mary-Anne Crawford
Manager Development and Environmental Services