

SUBMISSION ON OPERATIONAL REHABILITATION REFORMS

6 November 2020

NSW MINERALS COUNCIL



Introduction

The NSW Minerals Council (NSWMC) represents the State's \$31 billion minerals industry.

NSWMC provides a single, united voice on behalf of our more than 90 members, who range from junior exploration companies to international mining companies, as well as associated service providers.

Mining has long been and will continue to be a key industry for the NSW economy. NSWMC works closely with government, industry groups, stakeholders, and the community to foster a strong and sustainable minerals industry in NSW.

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Executive Summary

NSWMC appreciates the opportunity to comment on the revised Operational Rehabilitation Reforms (the Reforms) and for the Regulator's consideration of feedback provided in previous iterations of the Reforms.

NSWMC's members are primarily involved with the operation of 'large mines' as set out in the Reforms and hence has focussed our review on the Form and Way documents for large mines as well as the Mining Amendment (Standard Conditions of Mining Leases - Rehabilitation) Regulation 2020 (Standard Conditions).

From an industry perspective, the revised Operational Rehabilitation Reforms appear to be significantly improved, and industry recognises that the Regulator has made efforts to reduce the regulatory and administrative burden from what was previously proposed.

While the Reforms have been amended to allow more flexibility, some elements of the Form and Way guidelines could be streamlined to reduce complexity and duplication for industry.

The Standard Conditions require the inclusion and implementation of all aspects of the Form and Way documents. This requirement does not allow any consideration of the site-specific risk context. For example, an underground or smaller site within the designated 'large' category (i.e. sites subject to an Environment Protection Licence (EPL)) may not require all elements of the Rehabilitation Management Plan (RMP) but under the proposed Standard Conditions would be required to include these matters.

NSWMC understands that the Reforms have been under consideration for some time and has tried to streamline the feedback provided accordingly. NSWMC believes that the comments and recommendations set out in this submission will provide industry with the clarity and certainty to help fulfil all of the mandatory requirements under the new Standard Conditions and Form and Way documents.

We encourage the Resources Regulator (RR) and Mining, Exploration and Geoscience (MEG) to consider these recommendations as the proposed Reforms documents are finalised and would welcome the opportunity to meet to discuss this submission.

Summary of Key Recommendations

Duplication and complexity across standard ML conditions and Form and Way Documents

- NSWMC recommends that RR/MEG consider revising the aforementioned sections of reform package to reduce unnecessary duplication of reporting requirements; and
- NSWMC recommends that RR/MEG give consideration to nominating a review period following the initial implementation of the Reforms to identify and address any issues that have arisen during industry implementation.
- NSWMC recommends that RR/MEG provide flexibility in the Form and Way documents commensurate with the risk profile of the mine to ensure the document is practically useful and relevant.

Clarity required on defining final land use

- NSWMC recommends clarification be provided on the level of detail required to establish the Final Land Use in the Form and Way document. The Reforms should be expanded to include that if a leaseholder has committed to a conceptual final land use in the EIS or another supporting document, this should also satisfy this component for the RR/MEG.
- NSWMC recommends that Cl. 4(1) be revised to state that the lease holder is to achieve approved rehabilitation outcomes and final land use to the satisfaction of the Secretary (or Minister), so it is clear as to how compliance with this condition is to be measured.

Duplication of Development Consent Conditions

- NSWMC recommends that discussions continue with DPIE to provide certainty to industry prior to the reforms taking effect. Specifically, that completing the RMP according to the Form and Way document will satisfy the rehabilitation requirements of Development Consent Conditions and that there will be no duplication of existing rehabilitation related reporting obligations under the Annual Review or AEMR.

Inclusion of matters not relevant to rehabilitation in RMP, and ARR and Forward Program

- NSWMC recommends that RR/MEG include additional notes in the Form and Way (RMP and ARFRP) documents to qualify that only matters related to site rehabilitation are required to be included.
- NSWMC recommends that RR/MEG clarify what is meant by biodiversity offsets and clearly delineate offsets, ecological rehabilitation which generates offset credits and ecological rehabilitation. It should be clear that the biodiversity offset only need be identified in the RMP where it is relevant to provide context to rehabilitation and that there should be no requirement to provide rehabilitation objectives.

Reporting requirements in respect of non-compliances with a ML/Mining Act

- NSWMC recommends that RR/MEG work with the Parliamentary Counsel Office to revise Clause 11 of the Standard Conditions and clarify that only information known by the leaseholder is required at the time of reporting.

Variations to Rehab Schedules in ARR and Forward Program

- NSWMC recommends that RR/MEG provide guidance to industry in the Form and Way (AAFRP) document regarding:
 - Clarity as to how a lease holder is to manage non-completion of the forward program (e.g. a different amount of rehabilitation or disturbance than originally predicted), the threshold at which a variance warrants specific notification to the Regulator and articulate the process required to address any identified variation with the Regulator; and

- Clarity that if a lease holder is directed by the Secretary to amend their final land use plan, or completion criteria, then such variations from the agreed land use will not be considered a non-compliance by the Regulator, and will not be the subject of regulatory action.

Definition of 'reasonably practicable'

- NSWMC recommends that when the guidance materials are drafted, they clearly articulate what the term 'reasonably practicable' is considered to mean, given this will be enforceable.
- NSWMC recommends that the term 'reasonably foreseeable hazard' is defined in the Standard Conditions, or otherwise clarified in the relevant Form and Way document by the RR.

Consultation on Guideline documents

- NSWMC recommends that these guidelines be the subject of targeted consultation with industry prior to the commencement of the new Reforms to ensure they are fit for purpose and worded appropriately.

Limiting the amount of publicly available data via the SEED portal

- NSWMC recommends that RR/MEG ensure a cautious and conservative approach to the provision of industry data in the public domain and provide certainty for industry that the data provided in good faith will be managed and presented to the public in a secure manner.

Transitional arrangements

- NSWMC recommends that RR/MEG ensure that sufficient resourcing is made available to reduce the potential administrative burden of mass submissions and approvals during the same time period.
- NSWMC recommends that RR/MEG provide industry with an option to nominate an appropriate reporting date.
- NSWMC recommends that a process be established to provide for an extension to the transitional arrangements where necessary.
- NSWMC recommends that RR/MEG clarify leaseholder obligations to comply with existing conditions of the ML in the event that the RR is unable to streamline/vary all mining instruments before the new standard conditions take effect.

Requirements in the RMP regarding Rehabilitation Risk Assessments, and Research and Trials

- NSWMC recommends that RR/MEG either delete Cl. 5(1)(d) in the Standard Conditions or provide further context in the Form and Way document as to when this clause may apply.
- NSWMC recommends that Cl 6(5) in the Standard Conditions should be amended to provide that a lease holder will not be in breach of this condition if actions/measures contrary to those contained in the RMP are required to comply with any order or direction given under environmental or safety legislation (similar to the current exemption in condition 3(e) of the standard ML conditions).
- NSWMC recommends that Section 9.1 of the Form and Way (RMP) section be revised to clarify that rehabilitation research and trials are not mandatory and need only be addressed where appropriate.

Other issues for consideration

- NSWMC recommends that Explanatory Note 5 in the Form and Way (RMP) document, which provides for the use of analogue sites in considering rehabilitation objectives and rehabilitation completion criteria for final land use domains, be limited to 'where appropriate', as some sites with a more unique or novel land use may not have an analogue site available, or this will not be necessary.

- NSWMC recommends that Section 6.2.3 of the Form and Way (RMP) regarding Landform Establishment be revised to state this section will be satisfied by including conceptual or process information only, as much of the detail required by this section may not be known until detailed closure planning is undertaken.
- NSWMC recommends that Section 1.1 of the Form and Way (ARRFP) document requiring leaseholders to list key personnel (including their position titles and contact details) responsible for operational, environmental and rehabilitation management be deleted as it is inappropriate to include such details in a publicly available document.
- NSWMC recommends Section 2.2.5 in the Form and Way (ARRFP) be revised so that a reference to the Extraction Plan should be permitted in this section.

Key Issues:

1. Duplication and complexity across standard ML conditions and Form and Way Documents

Although the level of duplication of reporting requirements has been significantly improved since the 2018 proposed reforms, there remain elements of the form and way documents that would benefit from further streamlining or clarification. Industry is concerned about the unnecessary complexity in the revised ML Conditions and Form and Way documents.

Specific examples of unnecessary duplication and complexity can be found in requirements for:

- **Progressive rehabilitation** - This requirement is included in both Cl. 3 of the Standard Conditions, and in state significant development consents for mining projects that include a condition that the applicant must rehabilitate the site progressively as soon as reasonably practicable following disturbance. Industry is concerned that there is the potential to lead to two regulators taking action under separate pieces of legislation for the same activity in the event of a breach of a requirement (e.g. the progressive rehabilitation requirement). As progressive rehabilitation is also required under an RMP (in accordance with the Form and Way (RMP) document), Cl. 3 is also duplicating other requirements of the Standard Conditions such as Cl. 8, which requires the leaseholder to prepare an annual rehabilitation report and forward program, with Cl. 8(4) providing that the forward program requires rehabilitation as soon as reasonably practicable after the disturbance occurs. A condition relating to progressive rehabilitation should appear only once in the Standard Conditions (in addition to the development consent requirements), therefore Cl. 3 should be deleted as a separate requirement under a Mining Lease.
- **Protection of the environment** - Industry is concerned that the Standard Condition, Cl. 2 (regarding the Protection of the Environment), is duplicating requirements of s150 of the Protection of the Environment Operations Act 1997 (NSW), and presents potential for prosecution across various instruments.
- **Quality assurance** - The Form and Way (RMP), under Part 7, provides that the lease holder must include a description of the rehabilitation quality assurance process that will be implemented throughout the life of an operation for various phases of rehabilitation from active mining through to ecosystem and land use establishment and development. As these processes are unlikely to be different for each of the rehabilitation stages, this requirement could be simplified to describe the quality assurance processes for rehabilitation more generally. NSWMC understands that while it is not the intent of RR/MEG to have separate Quality Assurance or Performance Monitoring processes for each stage of rehabilitation, industry is concerned that the prescriptive nature of the Form and Way (RMP) document, as it is currently drafted, may result in significant duplication of information across various sections of the RMP.
- **Rehabilitation performance monitoring** - The Form and Way (RMP), under Part 8 provides that lease holders are required to develop and implement a rehabilitation monitoring program to evaluate the progress of rehabilitation towards fulfilling rehabilitation objectives and rehabilitation completion criteria (including any baseline monitoring at analogue sites). This requirement is broken down into many components and may be onerous for industry to comply with given the prescriptive nature and lack of flexibility. An example of this appears in the Rehabilitation establishment monitoring in Section 8(2), which requires a dedicated

monitoring program as opposed to a single monitoring program for all stages of rehabilitation. NSWMC is concerned that this may adversely impact smaller or underground sites, which likely only have a few simple processes to establish and monitor their rehabilitation. Any requirements should be commensurate with the site's risk profile.

- **Performance outcomes** - Clause 31B 1 (e) requires that a RMP includes “a statement of the performance outcomes for the matters referred to in paragraph (d) and the ways in which those outcomes are to be measured and monitored.” Matters mentioned in (d) are the rehabilitation objectives, rehabilitation completion criteria, and final landform and rehabilitation plan. It is not clear how the ‘performance outcomes’ are different to the information that will be provided through the objectives, completion criteria and indicators.

There is an opportunity to streamline these documents to ensure they are operationally practical, and the requirements are clearly understood. Further, NSWMC encourages RR to prepare a test or practice RMP to ensure that RR is comfortable with undertaking all the requirements being asked of industry. A scheduled review of the reforms following implementation may be appropriate to address any issues that have arisen as industry implements the reforms.

The RMP would also benefit from additional guidance to clarify that not all elements are necessary to include in the site RMP depending on the risk profile of the site.

Recommendations:

- **NSWMC recommends that RR/MEG consider revising the aforementioned sections of the reform package to reduce unnecessary duplication of reporting requirements; and**
- **NSWMC recommends that RR/MEG give consideration to nominating a review period following the initial implementation of the Reforms to identify and address any issues that have arisen during industry implementation.**
- **NSWMC recommends that RR/MEG provide flexibility in the Form and Way documents commensurate with the risk profile of the mine to ensure the document is practically useful and relevant.**

2. Clarity required on defining final land use

In the Standard Conditions, Clause 4(1) requires that the lease holder ensure that rehabilitation of the mining area achieves the final land use for the mining area, where the final land use is the final land use stated in the development consent, or otherwise as stated in the rehabilitation objectives and completion criteria.

It is unclear as to when a final land use will be considered to be stated in a development consent condition for the purpose of the definition of ‘final land use’ in Schedule 8A. For example, many mining development consents require that the applicant must carry out rehabilitation generally consistent with final landform rehabilitation plans (that are typically attached to the consent).

It is not clear whether this would constitute a final land use required by a consent, particularly when these plans are generally conceptual in nature, and therefore subject to change throughout the life of a mine.

Further, it is a requirement of the Development Consent to comply with the commitments made in the EIS and to conduct your operation generally in accordance with the EIS and supporting documents. In

instances where the Development Consent itself does not set out the final land use, the final land use as described in the EIS and supporting documents remains enforceable and should be deemed to satisfy the requirements of the RMP.

Industry requires clarity as to how it would be determined if the final land use set out in a consent would satisfy the Regulator's requirements. As the proposed Form and Way (RMP) document process currently provides for this requirement, this is a potentially complex and time-consuming requirement, which may expose industry to financial and reputational risk.

It is also unclear in Cl. 4 as to how compliance to the condition to achieve rehabilitation outcomes and final land use will be measured. NSWMC understands that rehabilitation will only be 'signed off' by RR if it complies with Cl. 4(1) to the satisfaction of the Secretary, however this clause should be clarified to provide industry with certainty.

Section 2.2 of the Form and Way (RMP) document, relates to 'Final land use options assessment' and states that the section 'only applies when the development consent does not define the final land use.' We refer to our comments above regarding when final land use will be considered to be 'defined' under a development consent. It is also common for development consents for a mine to contain a condition requiring a mine closure plan to be prepared 5 years prior to cessation of mining. As part of this process applicants are to generally investigate potential post-mining land uses for the site.

We assume that a post-mining land use strategy is different to the land use options assessment referred to in section 2.2 of the Form and Way (RMP) document, however RR needs to clarify this to avoid duplication and confusion.

As final land use options may change dramatically throughout the life of a mine, it is appropriate that conceptual final land use plans are considered to satisfy requirements considering final land use until such time that more certainty can be provided (i.e. in the final years of a mine life).

Recommendations:

- **NSWMC recommends clarification be provided on the level of detail required to establish the Final Land Use in the Form and Way document. The Reforms should be expanded to include that if a leaseholder has committed to a conceptual final land use in the EIS or another supporting document, this should also satisfy this component for the RR/MEG.**
- **NSWMC recommends that Cl. 4(1) be revised to state that the lease holder is to achieve approved rehabilitation outcomes and final land use to the satisfaction of the Secretary (or Minister), so it is clear as to how compliance with this condition is to be measured.**

3. Duplication of Development Consent Conditions

State significant development consents for mining projects generally include conditions requiring compliance with a variety of rehabilitation related conditions including rehabilitation objectives and preparation and implementation of rehabilitation strategies and rehabilitation management plans (often required to be approved by the RR). However, under the Standard Conditions in the proposed Reforms, the RMP itself is not required to be separately approved by the Secretary, but certain elements of that plan (i.e. the rehabilitation objectives, completion criteria and final landform and rehabilitation plan) are to be approved by the Secretary.

It is unclear how the approval requirement under development consents sits with the Standard Condition. The usual conditions of consent require an applicant to implement the RMP (as approved by the RR) which is duplicated in clause 6(5) of the Rehab Regulation.

Industry is concerned that the requirement to complete the RMP in accordance with the Form and Way document duplicates Development Consent Conditions and recommend that RR/MEG provide clarity on this matter. Industry supports a blanket exception whereby a leaseholder completing the RMP in the Form and Way would automatically satisfy all rehabilitation related Development Consent conditions.

NSWMC understands that RR/MEG have met with the DPIE, who are very supportive of removing duplication. NSWMC encourages continued discussions with DPIE to resolve this matter prior to the Regulation amendment being enacted.

Industry is also aware of certain sites that operate under a council issued development consent, which carry a requirement to have their RMP approved by the RR. These operations risk a potential administrative non-compliance given the proposed reforms do not require the RMP itself to be separately approved by the Secretary. NSWMC recommends that RR/MEG provide clarity on this matter to ensure such lease holders are not forced into a position of non-compliance and potentially subject to regulatory action.

Further, industry is concerned about potential duplication in rehabilitation reporting under the annual reporting requirements in relation to the Annual Environmental Management Report (AEMR) or Annual Reviews. NSWMC understands that the reporting obligations of the ARR will satisfy the AEMR/Annual Review however seeks confirmation of this in the reform documents to provide certainty for industry.

Recommendation:

- **NSWMC recommends that discussions continue with DPIE to provide certainty to industry prior to the reforms taking effect. Specifically, that completing the RMP according to the Form and Way document will satisfy the rehabilitation requirements of Development Consent Conditions and that there will be no duplication of existing rehabilitation related reporting obligations under the Annual Review or AEMR.**

4. Inclusion of matters not relevant to rehabilitation in RMP, and ARR and Forward Program

Industry is concerned that the Form and Way (RMP and Annual Rehabilitation Report & Forward Program (ARRFP)) documents contain several requirements that may not be relevant to rehabilitation, including requirements relating to biodiversity offsets (especially those remote from the site) and cultural heritage.

Biodiversity offset agreements are included in 'all regulatory requirements for rehabilitation'. Biodiversity offsets agreements are not a regulatory requirement for rehabilitation. Offsets may be remote and not linked to a site and therefore not relevant to rehabilitation. If an offset site is contiguous to a rehabilitation area, it may be relevant to provide a picture of the broader landscape (see Form and Way (RMP), Cl .2.1. Regulatory requirements for rehabilitation, and Cl. 2.4. Final land use and mining domains).

There needs to be greater clarity around biodiversity and rehabilitation. The rehabilitation objectives for an area may be to return it to native vegetation. This may or may not generate biodiversity credits. Where an area of ecological mine rehabilitation does generate biodiversity credits, it is not secured by an offset agreement.

Explanatory Note 3 of the Form and Way (RMP for Large Mines) includes examples of final land use domains to be identified. This includes “biodiversity offsets (including remnant vegetation or rehabilitation areas proposed to be subject to a Biodiversity offset application under the Biodiversity Conservation Act 2016)”. It is not clear what is being identified in this description. If these are biodiversity offsets for which a Biodiversity Stewardship agreement is being applied for then, these offsets are only relevant to provide context for the rehabilitation if contiguous and providing location and description should be sufficient. Explanatory Note 5 states that “Rehabilitation objectives must (as a minimum) demonstrate that each final land use domain will be returned to a condition capable of achieving the final land use”. This information should not have to be provided for offsets, which are not rehabilitation and are covered by a separate regulation and regulatory agency.

Cultural heritage sites on land adjacent to tenements are unrelated and are a separate issue to rehabilitation. Cultural heritage sites and objects are typically sensitive and not for publication (see Form and Way (RMP), Cl. 1.31 - Land ownership and land use figure).

NSWMC considers that any requirements for inclusion in the RMP or other plans be qualified to ensure they are necessary and related to onsite rehabilitation.

Recommendation:

- **NSWMC recommends that RR/MEG include additional notes in the Form and Way documents (RMP and ARFP) to qualify that only matters related to site rehabilitation are required to be included**
- **NSWMC recommends that RR/MEG clarify what is meant by biodiversity offsets and clearly delineate offsets, ecological rehabilitation which generates offset credits and ecological rehabilitation. It should be clear that the biodiversity offset only need be identified in the RMP where it is relevant to provide context to rehabilitation and that there should be no requirement to provide rehabilitation objectives.**

5. Reporting requirements in respect of non-compliances with a ML/Mining Act

In the Standard Conditions, Cl.11(1) requires lease holders to provide the Minister with written reports in relation to any non-compliances with a ML or the Mining Act. Cl.11(3) requires written reports to include various information including the cause of a non-compliance and any actions that have been taken or will be taken to mitigate the effects of a non-compliance or prevent reoccurrence.

In some cases, the lease holder may not know the cause of an incident or actions to prevent recurrence at the time of reporting. Industry should only need to provide information known by the lease holder at the time of reporting. Similar to the review of control measures under the recent WHS laws, RR/MEG could clarify in the regulation that this comment refers to ‘*causes or likely causes of incidents*’.

Recommendation:

- **NSWMC recommends that RR/MEG work with the Parliamentary Counsel Office to revise Clause 11 of the Standard Conditions and clarify that only information known by the leaseholder is required at the time of reporting.**

6. Variations to Rehabilitation Schedules in ARR and Forward Program

The Form and Way (ARRFP) document requires leaseholders to prepare and submit both a rehabilitation report and forward program on an annual basis, which includes a requirement to report on rehabilitation performance over the previous year, including whether the rehabilitation schedule for Year 1 in the most recent forward program was achieved.

NSWMC understands that if leaseholders anticipate or become aware of variations to the rehabilitation schedule, including if less rehabilitation is expected to be completed than the area nominated in the previous Forward Program, they should contact RR/MEG directly to advise of these changes to discuss how this will be regulated.

It would be valuable to provide further clarity on this process, including the threshold or significance of any variation that would require consultation with the Regulator. For example, would a minor variation from the anticipated rehabilitation or disturbance areas (of say less than 10%) require consultation or simply reporting in the ARR.

Further, RR/MEG has an opportunity to provide clarity and guidance for industry in the Form and Way (ARRFP) document for variations of rehabilitation schedules where a site's final approved rehabilitation outcomes vary from those contained in the RMP/Forward Program at the commencement of the reporting period, if the Secretary requires changes to those outcomes during the approval process. Clarity should be provided for industry that if the Secretary has directed a leaseholder to amend their final land use plan, or completion criteria, as a result of this variation, then this will not be considered a non-compliance and will not be the subject of regulatory action.

Recommendation:

- **NSWMC recommends that RR/MEG provide guidance to industry in the Form and Way (ARRFP) document regarding:**
 - **Clarity as to how a lease holder is to manage non-completion of the forward program (e.g. a different amount of rehabilitation or disturbance than originally predicted), the threshold at which a variance warrants specific notification to the Regulator and articulate the process required to address any identified variation with the Regulator; and**
 - **Clarity that if a lease holder is directed by the Secretary to amend their final land use plan, or completion criteria, then such variations from the agreed land use will not be considered a non-compliance by the Regulator, and will not be the subject of regulatory action.**

7. Definition of ‘reasonably practicable’ and ‘reasonably foreseeable hazard’ require clarity

Cl. 3 of Standard Conditions provides that the lease holder is to rehabilitate land and water in the relevant mining area as soon as ‘reasonably practicable’ after the disturbance occurs.

NSWMC notes that what is ‘reasonably practicable’ in terms of progressive rehabilitation will differ between coal and metalliferous sectors due to the mine design.

NSWMC understands that the lack of clear definition for ‘reasonably practicable’ was flagged with the Parliamentary Counsel Office, which opted not to include a specific definition in the regulation as it is adequately defined in case law and statutes.

Industry is also concerned that the term ‘reasonably foreseeable hazard’, which is included in Cl. 4(2) of the Standard Conditions, and which requires that the lease holder must identify and record any ‘reasonably foreseeable hazard’ that presents a risk to the lease holder’s ability to achieve the final land use. However, the Standard Conditions and Form and Way documents include no definition of what a ‘hazard’ is, and therefore it is unclear as to how this condition is to be applied.

Although industry has a generally understood concept of how these terms would apply to their sites, they may differ across operations, and with that of the Regulator. RR/MEG has an opportunity to provide clarity as to what the terms ‘reasonably practicable’ and ‘reasonably foreseeable hazard’ are when drafting the guideline materials and reviewing the Standard Conditions and Form and Way document.

Recommendation:

- **NSWMC recommends that when the guidance materials are drafted, they clearly articulate what the term ‘reasonably practicable’ is considered to mean, given this will be enforceable.**
- **NSWMC recommends that the term ‘reasonably foreseeable hazard’ is defined in the Standard Conditions, or otherwise clarified in the relevant Form and Way document by the RR.**

8. Consultation on Guideline documents

The FAQ states that new guidelines will be prepared to help industry in relation to rehabilitation risk assessments, rehabilitation records and rehabilitation controls, and were the subject of previous industry consultation during the 2018 round of consultation.

NSWMC understands that these guidelines will be released after the consultation period during the 12-month implementation period. However, it is important that a targeted consultation period be provided for industry to further review the guidelines and ensure they are succinct, provide practical advice, and assist industry in meeting their compliance with the mandatory requirements of the Standard Conditions and Form and Way documents.

It should also be clear in the guidelines that these are to be used as a guide only and are in no way mandatory, nor are they to be used by the RR for compliance purposes in assessing compliance under the Mining Act.

Recommendation:

- **NSWMC recommends that these guidelines be the subject of targeted consultation with industry prior to the commencement of the new Reforms to ensure they are fit for purpose and worded appropriately.**

9. Limiting the amount of publicly available data via the SEED portal

The FAQs for the Operational Rehabilitation Reforms note that rehabilitation data will be made public via the SEED portal.

Clarity is needed on exactly what industry rehabilitation data the public will be able to access on the SEED portal and in what format. From discussions with RR/MEG, NSWMC understands that the SEED portal will use a selection of data from a variety of agencies, will not be downloadable, and intends to provide only high-level information compared to the more-detailed GIS industry rehabilitation portal.

However, this remains an ongoing area of concern for industry given the potential for misuse and misinterpretation should any potentially sensitive industry data be released. Industry would prefer to limit the data available to the public to the rehabilitation plans themselves (i.e. the RMP, the ARR and the Forward Program).

We suggest that RR/MEG articulate the specific data that will be provided publicly through the portal, and also clarify whether other Government agencies will have access to the portal to track compliance with other relevant legislation, such as the EP&A Act.

Recommendation:

- **NSWMC recommends that RR/MEG ensure a cautious and conservative approach to the provision of industry data in the public domain and provide certainty for industry that the data provided in good faith will be managed and presented to the public in a secure manner.**

10. Transitional arrangements

Industry considers the transitional arrangements to be reasonable (i.e. 12 months for large mines; and 24 months for small mines; from the date that the Rehab Regulation commences) and should provide sufficient time for leaseholders to prepare for the commencement of the Standard Conditions.

NSWMC understands that industry will be provided with flexibility for each site to align the submission date with current reporting requirements. It may be appropriate for the Regulator to contact industry regarding alignment of reporting dates to avoid industry having to make individual representation. The inclusion of an option to nominate the aligned reporting date during the consultation on the Mining Lease condition amendment may be appropriate.

It will be important for the ML instruments to be updated before the Standard Conditions commence to avoid confusion by leaseholders as to what requirements apply and when. It is therefore important

that MEG be sufficiently resourced to accommodate the potential for significant volumes of approvals during this period.

Further, NSWMC recommends that RR/MEG consider allowing for a mechanism to provide an extension for sites that experience extenuating circumstances and which may not be able to comply with the 12-month timeframe in the event of significant unforeseen or unplanned changes to the operations (e.g. unplanned mine closure or a significant operational impact that impacts the rehabilitation planning). Such sites risk a non-compliance should they not meet the requirements within the 12-month transitional period, and therefore require certainty about the process should events occur that may extend the implementation process beyond the allocated timeframe.

Industry is also seeking clarity on what would happen in the event that the RR/MEG does not complete all tasks associated with streamlining or varying all the mining instruments before the standard conditions take effect (i.e. 12 months after the date on which the amending Regulation commences)? For example, would lease holders technically still be required to comply with both the redundant conditions on the instrument as well as the new standard conditions that have commenced?

Recommendations:

- **NSWMC recommends that RR/MEG ensure that sufficient resourcing is made available to reduce the potential administrative burden of mass submissions and approvals during the same time period.**
- **NSWMC recommends that RR/MEG provide industry with an option to nominate an appropriate reporting date.**
- **NSWMC recommends that a process be established to provide for an extension to the transitional arrangements where necessary.**
- **NSWMC recommends that RR/MEG clarify leaseholder obligations to comply with existing conditions of the ML in the event that the RR is unable to streamline/vary all mining instruments before the new standard conditions take effect.**

11. Requirements in the RMP regarding Rehabilitation Risk Assessments, and Research and Trials

Lease holders are required to conduct a risk assessment prior to preparing a RMP under Cl. 5(1) of the Standard Conditions and may also be required 'whenever directed in writing to do so by the Secretary'. It is unclear in what circumstances a risk assessment would be required by the Secretary to be conducted other than the circumstances already prescribed in clause 5(1).

Clause 5(1)(d) should therefore either be deleted, or further context given in the Form and Way document as to when this clause may apply. The same comment applies to the preparation of RMPs, rehabilitation objectives, completion criteria and the final landform and rehabilitation plan and the ARR and forward program, which provide the Secretary with a broad discretion to direct certain documents be prepared and submitted outside the circumstances already prescribed.

NSWMC notes that clause 6(5) of the Standard Conditions requires the lease holder to implement the prepared RMP in accordance with the timeframes specified in the forward program. There is potential for non-compliance or regulatory action to arise in the event of a lease holder being required to comply with orders or directions that may be contrary to information contained in the RMP.

This condition should be amended to provide that a lease holder will not be in breach of this condition if actions or measures contrary to those contained in the RMP are required to comply with any order or direction given under environmental or safety legislation (similar to the current exemption in condition 3(e) of the standard ML conditions).

Section 9.1 of the Form and Way (RMP) requires lease holders to summarise the status of any current and ongoing rehabilitation research and trials carried out by the lease holder (as required) to address any knowledge gaps in relation to: the control or management of risks identified in the rehabilitation risk assessment; the development and further refinement of rehabilitation completion criteria; and the achievement of rehabilitation objectives and rehabilitation completion criteria.

Industry is concerned how this section may apply if a lease holder does not identify any knowledge gaps, as not every site will require research and trials, and there are many well-established rehabilitation techniques and methods to achieve rehabilitation objectives. This section should make it clear that rehabilitation research and trials are not required at all sites and need only be addressed where appropriate. Further, there may be an opportunity to integrate information about research trials within the monitoring program rather than as a separate requirement.

Recommendations:

- **NSWMC recommends that RR/MEG either delete CI. 5(1)(d) in the Standard Conditions or provide further context in the Form and Way document as to when this clause may apply.**
- **NSWMC recommends that CI 6(5) in the Standard Conditions should be amended to provide that a lease holder will not be in breach of this condition if actions/measures contrary to those contained in the RMP are required to comply with any order or direction given under environmental or safety legislation (similar to the current exemption in condition 3(e) of the standard ML conditions).**
- **NSWMC recommends that Section 9.1 of the Form and Way (RMP) section be revised to clarify that rehabilitation research and trials are not mandatory and need only be addressed where appropriate.**

12. Other issues

NSWMC has identified a number of other minor issues for consideration, which are outlined below:

- Note 1 under Schedule 8A of the Standard Conditions that a contravention of a condition of a mining lease constitutes an offence under Section 378D of the Act and is grounds for the cancellation of the lease under Section 125 of the Act. This Note does not add to the Regulation amendment and could create an expectation that mining leases will be cancelled for minor contravention of conditions.
- Cl. 9 of the Standard Conditions provides for when a lease holder may amend approved rehabilitation outcomes and submitted forward program, and states that the lease holder must not amend a document to which this clause applies (i.e. (a) the approved rehabilitation objectives, (b) the approved rehabilitation completion criteria, (c) for large mines—the approved final landform and rehabilitation plan, and (d) the submitted forward program. In the situation of a DA modification that approves a changed final landform, NSWMC queries why the lease holder is required to obtain the endorsement of the Secretary of Department of Regional NSW (DRNSW) to modify the final landform?

- In the Form and Way (RMP) document, reference is made to various Explanatory Notes, however following Explanatory Note 1, the next to be featured is Explanatory Note 3. NSWMC assumes this is a minor oversight/error, however clarity is needed on whether an Explanatory Note 2 is missing and needs to be included in the document.
- In the Form and Way (RMP), Part 4 outlines requirements under Rehabilitation Objectives and Completion Criteria. Explanatory Note 5, in reference to analogue sites advises that 'rehabilitation objectives and rehabilitation completion criteria for final land use domains must be based on the defining characteristics of appropriate analogue sites'. **NSWMC recommends this be limited to 'where appropriate', as some sites with a more unique or novel land use may not have an analogue site available, or this will not be necessary.**
- In the Form and Way (RMP), Part 6 outlines requirements under Rehabilitation Implementation. Section 6.2.3 relates to Landform Establishment. Much of the detail required by this section may not be known until detailed closure planning is undertaken (e.g. how the final landform will be constructed to address geotechnical issues on tailings dams and methods to cover tailings/emplacement areas). **NSWMC recommends that this section be satisfied by including conceptual or process information only.**
- In the Form and Way (ARRFP), Section 1.1 of the document requires leaseholders to list in a table the key personnel, including their position titles and contact details, who are responsible for the operational, environmental and rehabilitation management of the mine site at the time of submission of the annual rehabilitation report and forward program. NSWMC queries the reason for the inclusion of these details given lease holders have already nominated operators and statutory positions. It is inappropriate to include these details in a document that will be published publicly. Further, the operational management of responsibilities for rehabilitation are a matter for companies to determine. The Regulator should only be concerned with the rehabilitation outcomes. **NSWMC recommends this section be deleted.**
- In the Form and Way (ARRFP), Section 2.2.5 requires the lease holder to provide an overview of the nature and scope of any subsidence monitoring and expected remediation works proposed to be conducted over the next three years. **NSWMC recommends that a reference to the Extraction Plan should be permitted in this section.**
- In the Form and Way (ARRFP), Appendix 1 - Symbology guidance, this section lists the forecast data required as 'Yr. 1, Yr. and Yr. 3'. NSWMC assumes that this is a minor error, and that Yr. 2 is missing, however this should be included.
- In the Form and Way (Rehabilitation Objectives, Rehabilitation Completion Criteria and Final Landform and Rehabilitation Plan), Explanatory Note 2 provides information on the final land use and mining domain spatial reference. This section advises that 'Additional guidance on spatial reference is available from the RR'. NSWMC assumes this will be provided through the portal, however it is likely that industry will require support in the preparation of providing spatial data. The Regulator should clarify in the Form and Way document how this guidance will be obtained.

Conclusion

NSWMC looks forward to the opportunity to discuss this submission and further consultation with RR/MEG on the proposed Reforms package.

To discuss any of the comments or recommendations in this submission, please contact Craig Milton at [REDACTED]