

17 September 2024

ATTN: Hon Emily Suvaal, Chair
Members of the Standing Committee on State Development
Beneficial and productive post-mining land use
NSW Legislative Council

Dear Ms Suvaal and Members of the Committee,

Re: Post-hearing submission (response to questions on notice)

Thank you for considering my written submission and for the opportunity to provide evidence to the hearing in Lake Macquarie on 21 August.

During the hearing, I took two requests on notice, as follows.

1. Liaise with secretariat to provide details to arrange a briefing with CSIRO project team, and
2. To provide examples of best practice or a streamlined approach from other jurisdictions that might inform improvements to processes in NSW.

I am liaising with the secretariat separately in relation to point 1 and am confident that a briefing will be organised in due course. The remainder of this letter is made in response to point 2 above.

Summary

From my perspective, inefficiencies in the transition of land uses – and land ownership – following mine closure stem from interrelated processes within the Mining Act and Planning Act being undertaken without regard for each other. These processes relate to two key activities, as follows.

- **Strategic land use planning.** There is no statutory mandate to integrate the identification of post mining land uses as part of the mine closure planning process with broader government-led regional and local strategic land use planning. This, combined with a lack of reliable and publicly available information about final mine site land use configurations and rehabilitation timeframes, limits the basis for any long-term planning by governments (e.g., to rezone land so that it is legally available for new uses) or investors looking for advantageous development sites.

And, separately, once a development project is identified for a site,

- **Development approval.** The process to approve a new use or development project under the Planning Act does not recognise the mine relinquishment process under the Mining Act, and the approval process to fully relinquish a mine site is not required to assess a site's risk profile against the future use proposed / approved under the Planning Act. This leads to significant and costly delays and duplications in assessment, leaving little incentive for mining companies or private investors to seek an outcome beyond minimum compliance requirements.

My expertise is within the area of strategic land use planning, and the additional information provided herein focuses on frameworks to address the lack of integration in that space. Broadly, this submission:

- Describes global guides and research that are already available and could be applied in context here in NSW. This recognises that the issues experienced here in NSW are not unique, and while there is a global community of practitioners working to establish tried and tested methods, 'best practice' is still emerging.
- Identifies work that has already been completed at the Australian federal level to develop a Multiple Land Use Framework, (MLUF) but that this framework has not been translated widely at the State and Territory levels where it is best implemented.
- Describes in general terms the system-based changes that have occurred in QLD, which – whether by design or coincidence – appear to address key points emerging in global guidance and the principles set out in the MLUF.
- Provides some high-level commentary on the types of place-based approaches proposed for NSW generally and the Hunter specifically, but acknowledges that the methods described (e.g., Place Strategy planning and Jobs and Investment Authorities) are still largely unknown.

Key takeaways for the Committee include:

- Sense-checking current policy and practice in NSW against the global guides described herein would assist with identifying any gaps in emerging 'best practice'.
- Given the number of government service areas involved at both State and Local levels, a single coordinating body seems advantageous. Queensland's Mine Rehabilitation Commissioner model appears to be a positive step and may be replicable in NSW.
- Changes have already been made to NSW and QLD Mining Regulations relatively recently and, in both jurisdictions, will need some time to be tested in practice. NSW would benefit from establishing an ongoing policy and practice evaluation program to foster more efficiencies in improvements going forward.

- Any authority relating to a mining community in NSW should, at minimum, interface with regional and local strategic land use planning processes.
- Government must ensure that mine closure policy and processes – both current and any proposed changes – are adequately resourced for the long-term.

Global guides and research

There will never be a single solution to guarantee an efficient and effective mine closure process for all closed and closing mine sites – there are simply too many variabilities relevant to each individual mine site, and its context within a broader mining region. Yet several industry and governments organisations are working to continually improve outcomes by developing ‘good practice’ guides for practitioners conducting mine closure planning. These guides can substantially improve process efficiencies and trust by encouraging more predictable and repeatable approaches, ultimately normalising ‘tried and tested’ techniques or processes that may be appropriately embedded into system-based responses and delivered in a place-based context.

The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) is a global voluntary initiative seeking improvements in this space. They have published a suite of documents, which are all available online¹, that would be of interest to the Committee, including (but not limited to):

- *Relinquishment of Closed Mine Sites: Policy steps for governments (2023)*
- *Achieving a Successful Post-Mining Transition with Renewable Energy (2022)*
- *Global Review: Financial assurance governance for post-mining transition (2021)*
- *Current Status of Mine Closure Readiness: Are governments prepared? (2021)*

Of these, I have enclosed a fully copy of the IGF’s 2021 brief relating to government readiness [**Enclosure 1**], which provides a succinct summary of key issues that should be given priority consideration in relation to any potential system changes going forward, namely:

- Capacity and experience within government and regulatory bodies to fully implement mine closure policies – including sufficient human resources, and financial capacity.
- Community involvement at local, regional and national levels.
- Regulations and Guidance including aspects related to the quality of mine closure plans, the formalisation of reclamation/closure obligations, setting closure completion or success criteria, and the treatment of residual environmental risks after a mine is closed. Specific considerations are made for one aspect as a widespread area of concern – as below.
 - Financial Assurance noting in some jurisdictions, the challenge is the ability of domestic financial institutions to manage assurance – and to manage it at arm’s length from government – while in others, where

¹ <https://www.igfmining.org/resource/>

assurance is held outside of the country, the challenge is governments being guaranteed access to funds when legitimately needed.

- Closure Registry noting that, as with the NSW context, up to three quarters of countries lack a record of closed or abandoned mines, resulting in a significant planning gap / missed learning opportunity.
- Relinquishment processes, specifically the lack a clear process for the final relinquishment of a closed mine site back to government or private landowner. The brief makes special mention of (global) lack of legislation that considers or addresses the residual or long-term risks associated with closed mines, and financial assurance (as above) that covers residual risk.

The IGF's 2021 brief identifies Capacity and Experience in relation to mine closure policies as the single biggest barrier as it not only impacts individual mine site closures, but also the development and modification of regulations and practice guidance. This is worsened by a lack of integration between government bodies, and a lack of awareness of global practice.

Capacity and Experience also strongly influences governments performance in relation to Regulations and Guidance, with the brief identifying that many governments have not adopted publicly available international materials to support regulations, guidelines, etc. And, without clear management and risk frameworks in place, there is little incentive for companies to invest in closure planning that looks beyond minimum compliance towards achieving higher-level closure outcomes.

With respect to existing guidance materials available at an international level, I understand the International Council on Mining and Minerals' (ICMM) *Integrated Mine Closure: Good Practice Guide* is widely cited within the mining sector. The ICMM is unique as a 'trade association' insofar as it exists to improve the legacy of mining rather than to prioritise its members' commercial interests. It was established in 2002 and has endeavoured to evolve mining practice in parallel with changing societal attitudes around the world.

I do not believe the Committee needs to read the entirety of the *Integrated Mine Closure: Good Practice Guide* (currently on its 2nd edition), which is available online². Instead, I have separately enclosed an insightful description of how the guide has evolved [**Enclosure 2**], noting the key points of progress between the guides 2008 and 2019 editions were made to address gaps related to:

- the integration of closure into mine planning,
- social aspects of mine closure,
- post-closure land use, and
- the development of strategies for relinquishment.

Like the IGF, the ICMM is also a voluntary initiative, so the guide has no statutory basis in any jurisdiction, and I cannot comment as to which, if any, jurisdictions have moved

² https://www.icmm.com/website/publications/pdfs/environmental-stewardship/2019/guidance_integrated-mine-closure.pdf?cb=60008

to formally apply into government frameworks. However, it does demonstrate the positive but also relatively recent and still ‘work-in-progress’ changes that are occurring voluntarily within the mining industry itself.

As far as practical guides go, I would also point the Committee to the following sites, which both provide a range of resources, case studies, and signposts to further references.

- The Mine Closure Hub developed by the University of Queensland’s Sustainable Minerals Institute’s Centre for Social Responsibility in Mining, at <https://smi.uq.edu.au/csrm-knowledgehub/mine-closure-hub>
- The Transformations in Mining Economies Cooperative Research Centre (CRCTIME), at <https://crctime.com.au/research/programs/>

Australian land use policy – Multiple Land Use Framework

I have enclosed a journal paper that describes the history of multiple and sequential land use policy in Australia [**Enclosure 3**]. Some of the key points are provided below for convenience.

- Between 1972 and 1992, at least 16 federal inquiries called for a national land use policy. The closest initiative to address these calls was Australia’s National Strategy for Ecologically Sustainable Development (1992), which identified objective 13.1 as Multiple and Sequential Land Use, as a mechanism for balancing interests across the agriculture, forestry, and mining sectors. This objective was introduced by a Labor government and was subsequently endorsed by the Coalition. However, it was never supported with legislation or otherwise resourced for implementation.
- In the 2010s, State, Territory and Commonwealth Government Ministers endorsed the development of the Standing Council on Energy and Resources (SCER) Multiple Land Use Framework (MLUF). This sought to define a clear framework to allow multiple and sequential land use outcomes in an increasingly challenging and competitive environment.
- Since the MLUF was adopted, the SCER has been transitioned under various changes to the Federal Government architecture, and the MLUF appears to have slipped off the National agenda.

I was unable to source the MLUF online from any Australian Government department but have enclosed a copy archived within the Australian Energy Producers’ website [**Enclosure 4**].

The stated intent of developing the MLUF was to enable individual States and Territories to implement the framework through changes to regulation and guidance as relevant. I have not done a comprehensive search, but the only State-based initiative that I am aware of is in South Australia, where the MLUF has been translated into a non-statutory community engagement practice guide. The problem this initiative sought to address is

that several Acts with a remit to encourage or enable multiple and sequential land uses (not specific to mining) require consultation and engagement but do not always describe how or the standard to which this should be undertaken.

Systems based responses

Of greater relevance to the Committee, however, would be the legislative changes made by the Queensland Government, which, either by design or coincidence, appear to apply some of the functional aspects of the MLUF into a systems-based response. I have separately enclosed an article that describes the reform process and outcomes in more detail [**Enclosure 5**] and note that the issues emerging in QLD also largely parallel those described at a global level by the IGF and ICMM, including financial assurance, closure registry, relinquishment processes, and capacity and experience.

The elements I found most appealing to increasing efficiencies in the strategic land use planning space are summarised below.

- The largest mine sites are required under legislation to prepare and regularly review Progressive Rehabilitation and Closure Plans (PRCPs), which are publicly available.
- The guide for preparing PRCPs takes an adaptive approach, for example by allowing for ‘trial’ areas or methods and enabling changes to be without penalty made as mining operations evolve.
- The policy framework requires mining operators to propose PMLUs, but also mandates performance criteria that support an integrated approach by requiring operators to stipulate how they have considered aspects like surrounding landscape, community views, and the objects of any local and regional planning strategies. I must emphasise that these criteria are used by the QLD Government to assess whether a PRCP has been developed to a sufficient level of detail / consideration, not to assess whether a proposed PMLU is the best fit.
- Incorporated into the legislation is a schedule of milestones to rehabilitation – so broad range timings for change / change horizons are publicly available – as well as provisions that require re-notification of PRCPs if substantive changes occur.
- The establishment of QLD Mine Rehabilitation Commissioner provides a central point of contact for process related matters, as well as a responsive resource for guidance, research, and knowledge sharing.

I do not have comprehensive knowledge of the most recent regulations changes under the Mining Act in NSW, but I am broadly aware of similar intentions (e.g., standardising a ‘form and way’ for closure plans, and encouragement of progressive rehabilitation in practice, etc.). Given the recency of the changes in both QLD and NSW, I feel it would be appropriate for Government to establish an evaluation program to test the effectiveness

of the current framework in NSW against ‘good practice’ that is emerging, and continuing to evolve, elsewhere in Australia and overseas.

I would also refer the Committee back to the IGF’s cautionary advice to ensure sufficient capacity and resources are provided to the State-level departments responsible for implementing mine closure policy, and to ensuring those disparate services are suitably coordinated. In understand QLD’s Commissioner model has been positively received in this capacity.

Place based responses

Enabling merit-based access to land and/or effective sequential land use transitions requires the right conditions at both a systems level and a place-based level. As the Committee has already heard, each mining area will need its own solution to achieve good outcomes.

One example of this already occurring in NSW is the Place Strategy initiative described in the *Hunter Regional Plan 2041*. I have already pointed to this in my previous submissions as a potential game changer in relation to good intentions but have acknowledged that the initiative has not yet been fully tested. One system-based concern is that the initiative is merely an action described by a Regional Plan and could potentially be re-scoped or entirely defunded by Government at any time.

In that respect, I would recommend the Committee examines the various authority models emerging across Australia. I have gained considerable insights from visiting cohorts to Newcastle, including from La Trobe Valley (VIC) and Collie (WA), through my role at the Institute for Regional Futures at University of Newcastle, and have separately enclosed research prepared by the Institute for Regional Futures in 2023, *Regional Economic Transitions in NSW: Model Options* [**Enclosure 6**]. This report is previously unpublished but was commissioned by the Department of Regional NSW and submitted to the Hunter Expert Panel inputting to the NSW Government’s Royalties for Rejuvenation Fund.

I request that the report authored by the Institute for Regional Futures is treated as confidential and not published on the Committee’s website.

The duplication of Hunter-focused authority proposals at the Federal and State levels in recent years has caused a degree of confusion and scepticism locally. I have had the opportunity to participate in engagement initiatives at both levels and remain concerned about the apparent omission of strategic land use planning within the scope of services expected to be overseen or otherwise coordinated by the ‘jobs and investment’ authority. This area of expertise is highly specialised and will be an important component to enabling efficient / expedited processes for transitions to occur.

Final remarks

My experience indicates that moving beyond just compliance and towards a legacy mindset in the mine closure planning and post mining land use space is still finding its feet globally. Changes are evident within Industry, Government, and Communities – so any changes to processes and practice must remain adaptive if they are to remain relevant.

As mentioned in my previous submission, given the scale of the mining footprint in the Hunter – and the extent to which it is entangled in the Hunter’s identity – closure planning here should be treated and resourced as a matter of national significance. It is not a new area of interest in the Hunter – noting the 1999 Synoptic Plan [**Enclosure 7**] sought to bring good practice forward earlier in the process. But it does require leadership and long-term continuity, so must be adequately resourced to have any chance of delivering good outcomes.

Once again, I thank the Committee for their consideration of my submissions. Please do not hesitate to get in touch again if there is anything further that I can assist with clarifying as your inquiry continues to evolve.

Kind regards,

Amanda Wetzel

[Enclosures]

1. Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (2021) ‘Current Status of Mine Closure Readiness: Are governments prepared?’, available online: <https://www.iisd.org/system/files/2021-08/status-mine-closure-readiness-en.pdf> (last accessed 11 September 2024).
2. Brock, D (2020), ‘ICMM’s Integrated Mine Closure: Good Practice Guide – then and now’, available online: <https://www.ausimm.com/bulletin/bulletin-articles/icmms-integrated-mine-closure-good-practice-guide--then-and-now/> (last accessed 11 September 2024).
3. Walcott, J (2019) ‘Multiple and sequential land use: A national policy for Australia?’ in *Land Use Policy* volume 88.
4. Standing Council on Energy and Resources (2013) ‘Multiple Land Use Framework’, available online: <https://www.appea.com.au/wp-content/uploads/2016/04/Att-6-Chapter-7-Land-Access-and-Coexistence-Attachment-1-Endorsed-COAG-MLUF.pdf> (last accessed 11 September 2024).

5. Cooper, S (2019), 'Maximising post-mining land use: Queensland Government reforms', in AB Fourie & M Tibbett (eds), *Mine Closure 2019: Proceedings of the 13th International Conference on Mine Closure*, Australian Centre for Geomechanics, Perth, pp. 969-982, available online: https://doi.org/10.36487/ACG_rep/1915_76_Cooper (last accessed 11 September 2024).
6. [CONFIDENTIAL] Institute for Regional Futures at University of Newcastle (2023) 'Regional Economic Transitions in NSW: Model Options', unpublished.
7. NSW Department of Mineral Resources (1999), 'Synoptic Plan: Integrated Landscapes for Coal Mine Rehabilitation in the Hunter Valley of NSW'.