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**From:** Amanda Quin  
**Sent:** Tuesday, 28 January 2025 4:34 PM  
**To:** State Development  
**Cc:** Elspeth Pottie; Angela Hudson  
**Subject:** CM: RE: Inquiry into post-mining land use- Post-hearing responses - 17 December 2024

Dear Jessie,

Thank you for your below email regarding the inquiry into beneficial and productive post-mining land use. A response to the question on notice regarding the 4 policy papers submitted by Professor Roberta Ryan is attached.

This response incorporates input from NSW Resources and the Department of Planning, Housing and Infrastructure.

Kind Regards,  
Amanda

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**NSW Resources**

28 January 2025

## Response to question on notice

### Policy papers – Professor Roberta Ryan

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#### Papers

Four policy papers were submitted to the inquiry into beneficial and productive post-mining land use by Professor Roberta Ryan (Institute for Regional Futures, University of Newcastle).

- The papers were developed as part of a project to analyse the approval process for the Black Rock Motor Resort (Rhondda Colliery)
- The inquiry committee is seeking comment from the NSW Government on the recommendations of these policy papers
- A table for response for each policy paper is in Schedule 1.

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## Schedule 1 - Response tables

### General comments on the policy papers

- The policy paper actions talk to broader strategic planning system changes and governance at the regional and local scale, noting the challenges with existing planning and mining legislative frameworks. This can be incorporated into review and update of regional strategic plans and the relevant governance applied in their preparation. The need for a regional approach is well articulated, using the Hunter as the primary example. It is noted, however, that site-specific challenges will remain as part of considerations under current legislation and consents. There is useful content flagged in the policy papers, such as International Council on Mining and Metals (ICMM) Integrated Mine Closure: Good Practice Guide that could provide some good context for Department of Planning Housing and Infrastructure's (DPHI) future work.
- The existing legislative framework for mine rehabilitation and mine closure provides flexibility to support alternative post mining land uses. Under the *Mining Act 1992*, rehabilitation obligations can be varied to accommodate alternative post mining land uses at any time rather than just at the end of rehabilitation. This can be via the following pathways, all of which need to be assessed and determined under the *Environmental Planning and Assessment Act 1979*:
  1. Where a modification to the mine's development consent is granted by a determining authority for an alternative post mining land use, an application can be submitted under the Mining Act to vary the rehabilitation outcome documents, which will set the benchmarks that need to be achieved through rehabilitation to ensure that land is capable of supporting the alternative post-mining land use; or
  2. Partial relinquishment already exists under the current framework, and progressive rehabilitation can encourage this to occur. Where development consent is granted by a determining authority for an alternative post mining land use, an application for lease relinquishment (or part thereof) can be issued to NSW Resources to remove obligations under the Mining Act provided that any remaining obligations under the current development consent for mining as well as specified under the approved rehabilitation outcome documents under the Mining Act are either:
    - a. demonstrated to have been fulfilled; or
    - b. transferred as an obligation under the new development consent for the alternative post-mining land use.

There may be opportunities to improve the understanding of the framework and planning pathways.

- Policy paper 1 refers to a limited 'prescribed' list of land use domains that can be proposed by a mining company under the current regulatory framework. Where an alternative land use is approved via a new or modified development consent, the prescribed list can accommodate any post mining land use under the heading 'other'. This is then used to develop the range of associated rehabilitation objectives and completion criteria that need to be achieved to meet the final land use. **There is an opportunity to improve the supporting materials about the current regulatory framework to make this clearer and more explicit.**

- Responding quickly to development opportunities must be balanced with ensuring environmental and safety risks are managed before relinquishment. In the Black Rock example mentioned, there were several factors that led to the extended timeframes regarding lease relinquishment. Extensive studies and remedial actions were required to address rehabilitation issues associated with an operation that commenced in the early 1900s under a limited regulatory framework.
- There are myriad factors that have led to the lack of mining lease relinquishments in NSW, a key factor being mining company reluctance to relinquish titles to not limit future mining opportunities or to ensure ongoing access to land.
- Policy paper 1 states that 'global multi-nationals often move from mine operation to permanent 'care and maintenance' or sell the liability to smaller companies with even fewer resources available to support the relinquishment process'. The NSW Government's current mine rehabilitation framework minimises this risk, including requirements to progressively rehabilitate disturbed land, a suspension of mining policy and a robust security deposit framework.

## Comments on the policy paper recommendations

<b>Policy Paper 1 – Beneficial use of mining land as a priority for NSW prosperity</b>	
<i>Proposed actions for NSW Government</i>	<i>NSW Government comment</i>
1. Adopt beneficial use of mining land as a policy imperative	<p>As outlined in the issues paper for the Future Jobs and Investment Authorities released in May 2024 and the regional plans that have been developed by DPPI, the NSW Government is committed to facilitating the most appropriate beneficial use of former mining land. In some cases, this will include transformation of former mining land to economic uses such as power generation, industrial precincts or recreational purposes. In other circumstances the most appropriate beneficial use may be agriculture or native vegetation.</p> <p>The NSW Government is already working with the owners of various mine sites to identify clear pathways to facilitate alternate or innovative post mining land uses (PMLU) that support development of new industries.</p>
2. Pilot the beneficial use of mining land in certain locations	<p>Successful examples and case studies of beneficial PMLU will help build confidence over time for the owners of mine sites who are considering PMLU as a viable alternative option to original consents. This will be a focus for the Government’s proposed Future Jobs and Investment Authorities.</p> <p>NSW Resources offers a concierge service to facilitate consideration of mine closure matters, including PMLU proposals.</p> <p>In relation to the comments under this recommended action on page 11 of Policy Paper 1, the following should be noted:</p> <ul style="list-style-type: none"> <li>• In most cases, mining companies own the land and associated buffer areas and control any use these assets</li> <li>• The standard mining lease conditions would <b>not</b> need to be adapted as there is already flexibility under the framework to amend rehabilitation outcome documents for specific mines where development consent has been granted for beneficial post mining land uses</li> </ul>
3. Collaborate with inter-government regulatory agencies	<p>NSW Government agencies involved in PMLU, including NSW Resources, DPPI and the Environment Protection Authority, work closely together in relation to mining proposals, and their regulatory oversight across the mining lifecycle. There is early inter-government engagement with PMLU proponents to ensure that risks and opportunities associated with mining operations are factored into the design of the project and that appropriate regulatory measures are implemented to ensure there are no mining liabilities incurred by the State.</p>
4. Seamlessly coordinate regional land use requirements across government departments	<p>The Future Jobs and Investment Authorities will lead and coordinate whole-of-government input into maximizing opportunities for beneficial PMLU at former mine sites in coal-reliant regions. In many instances, mine land and associated buffer areas are owned by mining companies. While government can set strategic land use objectives and potentially incentivise beneficial re-use, the supply</p>

	<p>of mining land will ultimately be determined by a company's desire to utilise its land asset. This is where the Future Jobs and Investment Authorities can work with mine operators and local communities to explore and capitalise on opportunities.</p> <p>The Future Jobs and Investment Authorities will represent the views of local communities and other stakeholders and advise the NSW Government on regional priorities and investment opportunities. Representation will include local government, community groups, including First Nations people's representation, industry, including mining and other major or emerging employers, and worker representatives.</p>
5. Develop a risk sharing framework to assess and share risk in response to the current requirements of the Mining Act	<p>The NSW post mining land use framework balances comprehensive rehabilitation requirements with the economic and social benefits resulting from re-use of former mine sites and infrastructure. Mine closure can be a lengthy process to ensure that environmental and safety hazards are managed. Each decision is made on a case-by-case basis. This needs to be done in a way that ensures environmental outcomes are achieved and risks posed by the site (e.g. safety risks) are appropriately managed. The current framework allows for transfer of risk through covenants on land (for example, the Black Rock Motor Park).</p> <p>In cases where someone other than the mining company is seeking to assume responsibility for the land, there is scope for the transfer of certain rehabilitation obligations subject to sufficient financial provisions being met to enable quality rehabilitation and re-use. Any new post-mining developers will need to have sufficient technical and financial capability to manage responsibility for rehabilitation risk. There is social licence risk for mining companies who may be perceived to be offloading their responsibilities onto entities that don't have the resources to use the land in a sustainable manner.</p>
6. Support research into beneficial use of mining land at both a local and regional scale and make this publicly available	<p>Specific-site characteristics play a key role in determining the suitability of PMLU for various uses, with economic considerations also influencing whether proponents pursue types of PMLU projects.</p> <p>Increasing and improving the information available about possible uses of land post mining, good examples of alternate PMLU (i.e. case studies) and solutions to technical challenges, is likely to lead to more beneficial land uses at both the local and regional scale.</p>

### Policy Paper 2: Integrated strategic land use planning for beneficial use of mining land in NSW

<i>Proposed actions for NSW Government</i>	<i>NSW Government comment</i>
1. Lead the development of key principles to support a strategic planning land use framework across the whole mining lifecycle including:	Strategic planning through the Hunter Regional Plan 2041 signals that we need to change the way mine sites are considered in NSW. There are opportunities to frontload the consideration of alternate land uses in strategic areas through the layers of strategic plans (state, regional and local).

<ul style="list-style-type: none"> <li>— alignment of state, regional and local strategic land use plans (spatially and time) to create a nest of plans, embedded with each other at different spatial scales.</li> <li>— regionally based governance and collaborative decision-making.</li> </ul>	<p>Strategic planning provides an opportunity to identify and prioritise existing mine sites for PMLU that align with both state, regional and local priorities in appropriate locations. Suitable and sustainable re-use of these sites can be investigated, aiming to balance environmental systems and leverage existing infrastructure to support a range of employment and urban uses.</p> <p>DPHI is scoping work currently, specific to the Hunter, to inform updates to the next iteration of regional strategic plans. Regional strategic plans can provide the framework for collaboration across agencies to investigate existing approvals, timing of care and maintenance transitions and options to resolve the legislative constraints to potential reuse opportunities.</p>
<p>2. Design a strategic land use planning framework across the whole mining lifecycle to enhance certainty regarding when land will become available and facilitate early relinquishment.</p>	<p>Strategic planning through the Hunter Regional Plan 2041 signals that we need to change the way mine sites are considered in NSW. There are opportunities to frontload the consideration of alternate land uses in strategic areas and across the whole mining lifecycle through the layers of strategic plans (state, regional and local).</p> <p>DPHI will consider in future policy making and strategic planning, specifically the review and update of regional strategic plans.</p>
<p>3. Map and publish all mining leases and the status of mining company owned land in NSW, to facilitate better understanding of current status for communities and potential developers</p>	<p>NSW Resources has implemented the <a href="#">Mine Rehabilitation Portal</a>, where it is a mandatory requirement for operators of large mines to submit spatial data relating to their mining activities. This data is available to the community via the government’s Sharing and Enabling Environmental (SEED) portal. For each mining operation, this data includes mining leases, areas of mining disturbance and progressive rehabilitation as well as the final landform and rehabilitation plan. This data is updated immediately following a company’s upload of data required as part of its reporting obligations.</p> <p>All mining leases in NSW are also spatially mapped and publicly available through <a href="#">MinView</a>, which also shows information about the holder, and the expiry date of the mining lease. Further information about particular mining leases including title dealings is publicly available on NSW Resources’ <a href="#">NSW Mining Title Register</a>.</p> <p>Decisions to cease mining and fulfil stated closure timeframes is a mine operator matter. These decisions can change depending on a range of factors, including economic issues and company strategic direction.</p>
<p>4. Engage with and advocate to peak mining bodies (ongoing and planned)</p>	<p>The Future Jobs and Investment Authorities issues paper proposed the establishment of four local authorities to represent views of local communities and other stakeholders and advise the NSW Government on regional priorities and investment opportunities.</p>

<p>5. Assist relevant local governments to engage with the development industry. Capacity building of local government staff to support active engagement with developers and set expectations around timeframes and possibilities. Support rezoning and community engagement.</p>	<p>Representation will include local government, community groups, including First Nations people's representation, industry, including mining and other major or emerging employers, and worker representatives.</p>
<p>6. Engage with environmental peak bodies and political organisation.</p>	

**Policy Paper 3: The NSW government role to activate the land supply for beneficial mining land use to drive economic development**

<i>Proposed actions for NSW Government</i>	<i>NSW Government comment</i>
<p>1. Establish a range of financial incentives for early land release e.g. tax breaks, grants.</p>	<p>The NSW Government encourages proponents to consider PMLU compatibility at all stages of the mining life cycle. Mine lease holder benefits from changing to more productive PMLU include:</p> <ul style="list-style-type: none"> <li>• increased mining asset and residual land value</li> <li>• reduced financial burden and security requirements, through utilisation of existing mine infrastructure and reduction of decommissioning/removal costs</li> <li>• shorter relinquishment timeframes as part of earlier transitions to PMLUs</li> <li>• increased social licence.</li> </ul> <p>While mining lease holders may benefit from early relinquishment, ultimately this will be a commercial decision dependent on a range of factors, including economic issues.</p>
<p>2. Create liability transfer mechanisms for long-term and residual liabilities.</p>	<p>The current framework has scope to permit for the transfer of certain rehabilitation obligations, subject to sufficient financial provisions being met to enable quality rehabilitation and re-use.</p>



	The development of a specialised risk sharing framework could potentially streamline this process. This needs to be done in a way that ensures environmental outcomes are achieved and risks are managed.
3. Streamline the relinquishment process. This is to include clear guidelines.	NSW Resources has published guidelines entitled <a href="#">Guideline: Achieving rehabilitation completion (sign-off)</a> as well as <a href="#">Practical guide: Post mining land use</a> to assist industry navigate the relinquishment pathway and consider beneficial land uses.
4. Promote public-private partnerships for land rehabilitation.	Land rehabilitation is the responsibility of the mining lease holder.  When a mine site is ready for alternative economic activation, the Future Jobs and Investment Authorities will lead and coordinate whole-of-government input into maximizing opportunities for beneficial PMLU at former mine sites in coal-reliant regions.
5. Develop pathways to support community-based mining land reuse projects.	Typically mining land is owned by mining companies, and any decision to transfer the land would be a commercial decision for a mining company.  The NSW Government is working with mine sites to ensure clear pathways to facilitate alternate or innovative post-mining land uses that support development of new industries. NSW Resources also offers a concierge service to facilitate consideration of mine closure matters, including PMLU proposals.  Mt Arthur Coal (BHP) is a good example where the mine operator has been conducting extensive community consultation to provide community input on desired outcomes for the closure of their mining land in 2030. Mt Arthur Coal engaged over 800 individuals in 2024 ( <a href="#">BHP Closure Legacy Expectations Assessment Recommendations Opportunities</a> (December 2024)).

#### Policy Paper 4: Capacity development to support beneficial land use

<i>Proposed actions for NSW Government</i>	<i>NSW Government comment</i>
1. Develop an open source system to access baseline, transparent, reliable, consolidated land use mapping	The NSW Planning Portal provides this currently. There are opportunities to improve this as input data is updated, specifically through updates to strategic land use plans at the regional and local scale.
2. Legislate for participative processes for beneficial use of mining land	DPHI will consider these recommendations in future policy making and strategic planning, specifically the review and update of regional strategic plans.

<p>3. Fund a data bank of evidence-based case study research to inform local and regional planning about beneficial land use</p>	<p>Evidence-based case studies and research could assist in informing local and regional planning for beneficial post mining land use by the Future Jobs and Investment Authorities and local governments. Public access to this kind of research could also help communities in thinking about planning for and aspiring towards future beneficial land uses in their region.</p>
<p>4. Work with relevant local governments and their communities to create a regional governance mechanism for transition</p>	<p>The Future Jobs and Investment Authorities issues paper proposes the establishment of four local authorities to represent views of local communities and other stakeholders and advise the NSW Government on regional priorities and investment opportunities. Representation will include local government, community groups, including First Nations peoples' representation, industry, including mining and other major or emerging employers, and worker representatives.</p>
<p>5. Mandate monitoring and evaluation frameworks for beneficial land use</p>	<p>Requirements for monitoring of rehabilitation are set in the <i>Mining Act 1992</i>. Mining companies operating large mines are required to submit spatial data relating to their mining activities to NSW Resources which includes tracking areas of mining disturbance and progressive rehabilitation as well as the final landform and rehabilitation plan. This data is uploaded to the publicly available SEED portal which provides transparency.</p>
<p>6. The NSW Government Office of Local Government should capacity build Councillors and local government staff</p>	<p>NSW Government regularly and routinely engages with local councils. NSW Resources has developed the guideline <a href="#">Practical guide: Post mining land use</a> to assist stakeholders, including local council and industry navigate the relinquishment pathway and consider beneficial land uses.</p>