

**To: Department of Mining, Industry Regulation and Safety (DMIRS)**

**Re: Mining Development and Closure Proposals (MDCP) and Approvals Statements Discussion Paper**

31 July 2023

## Introduction

AMEC appreciates the opportunity to provide a submission to Mining Development and Closure Proposals (MDCP) and Approvals Statements Discussion Paper. The Mining Amendment Act 2022 included these reforms, and importantly the introduction of Eligible Mining Activities (EMA), which we look forward to future discussions on their rapid implementation.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 540 member companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2021/22 Industry generated a record high \$413 billion in resources exports, invested \$3.86 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$63 billion in royalties and taxes.

## General Comments

The new MDCP and Approvals Statement has the stated intent of streamlining documentation and increasing transparency. AMEC is supportive of both intentions. We consider that the MDCP and Approval Statement provide an opportunity to restructure how DMIRS does environmental assessment so that it fits within the broader umbrella of legislation and truly reduces duplication.

Industry anticipates the outcome of this reform is that it will create a substantial document. As the main document of the current Mine Closure Plan (MCP) averages over 450 pages, AMEC anticipates this document will be larger. This creates its own problems for regulators as assessing such a volume is difficult.

The key feedback from AMEC in this submission is:

- AMEC supports the intent of the reform to streamline;
- This is an opportunity to reduce the duplication of the content in a MDCP; and
- Future legislative reform should look to integrate a Mine Closure Plan into the MDCP.

## Specific Comments

AMEC has provided input into each of the sections in the Discussion Paper as outlined below.

### Structure and information required in a MDCP

The proposed structure and information requirements for an MDCP will be familiar to most proponents. Industry feedback is broadly supportive of this format as it achieves the focus of this reform to reduce duplication of information across the previously separate documents.

However, this format could be improved. The current structure outlined in the discussion paper requires the submission of a MDCP and subsequently the creation of a separate Mine Closure Plan (MCP). AMEC proposes that rather than the requirement to develop two separate documents it would be advantageous to revise the MDCP with updated information periodically. This would allow the MDCP to act as a single source of information that is current and up to date.

This approach would encourage proponents to submit revised MDCPs rather than multiple standalone MDCPs and therefore improve assessment efficiency and reduce duplicated effort.

Whatever necessary legislative reform should be prioritised to include the MCP into the MDCP.

### Description of the proposed mining operations

AMEC supports the approach of ensuring the key aspects of a mining development are captured whilst not confining the approval to a level of descriptive detail that may require future amendments for minor changes. This is particularly important for mine site supporting infrastructure where changes tend to be needed far more frequently than for other activities.

The activity envelope, maximum area of activity and further details on 'key mine activities' are all familiar. Removal of the detailed activity tables current required in MPs and replacement with a simpler description that defines only the 'key mine activities' is a welcome change.

Industry has identified that the discussion paper does not address the existing Mining Proposal issue of how best to present overlapping key infrastructure in the activity details aspect of the MDCP. There is a need for a clear and consistent approach for addressing overlapping infrastructure. The table format for activity details in the 2020 Statutory Guidance does not allow for this.

### Legislative framework

AMEC appreciates that an overview of the Baseline Environmental Data is required to contextualise a project sites. However, there needs to consideration that multiple agencies strive to regulate environmental disturbance.

DMIRS needs to supply guidance given on how to treat a DMIRS environmental factor that is wholly or partially regulated under other legislation. If a DMIRS environmental factor (e.g., biodiversity) is wholly regulated under other legislation, we consider that there is little need for any further assessment of this factor to be undertaken.

Not all matters are covered by the DMIRS legislative framework, nor should it be as there are many legislative frameworks a company operates under. The future guidance on environmental regulatory duplication should specify clearly what need not be included within the scope of the MDCP.

AMEC proposes that a company could list what is expressly excluded from the MDCP by way of appropriate assessment under other legislation. The reference number for that agency's approval could be provided in the list.

Industry is regulated under each of the legislative instruments in the below, AMEC considers that the regulated items detailed in the following legislation should not be duplicated:

<b>DMIRS Environmental Factor</b>	<b>Category/ Aspect</b>	<b>Regulating Legislation</b>
Biodiversity	Flora	Environmental Protection Act 1986,
	Fauna	Biodiversity Conservation Act 2016 Environment Protection and Biodiversity Conservation Act 1999 (Cth).
Water Resources	Groundwater	Environmental Protection Act 1986, Rights in Water and Irrigation Act 1914
Land and Soils	Soils	Dangerous Goods Safety Act 2004 Environmental Protection Act 1986, Contaminated Sites Act 2003.
Rehabilitation and Mine Closure	Mine wastes and hazardous materials	Dangerous Goods Safety Act 2004 Environmental Protection Act 1986, Contaminated Sites Act 2003
	Compliance and safety	Workplace Health and Safety Act 2020

### **Land uses and stakeholder engagement.**

Industry undertakes engagement with a range of stakeholders throughout the exploration for and development of a deposit. Clarification of how a MDCP interacts with the new Aboriginal Cultural Heritage Act 2021 is needed. As the Aboriginal Cultural Heritage Act 2021 is considered by the WA State Government as national best practice, there should be no need for duplication of the regulation in this legislation by DMIRS.

## Baseline Data

The proposed baseline data is envisaged to cover the same areas as the current MPs. The baseline data and analysis should be tied to the overall scope of the MDCP, such that duplication of information is not necessary where it has already been considered under other legislation. An important example of this is that where the potential impacts of a mining development on flora and fauna have been assessed under Part IV of the Environmental Protection Act (EP Act), there would be no need to provide baseline information on flora and fauna in the MDCP. AMEC asks that DMIRS clarifies whether the MDCP could further reduce duplication by accepting Part IV EP Act as correct.

There are numerous other examples of duplication from the legislative frameworks described above. DMIRS could support Industry by not demanding a duplication of these efforts, as they are regulated by other agencies.

## Risk assessment

The proposed risk assessment methodology is the standard semi-quantitative methodology that assesses risk at a fixed point in time and was developed for human health and safety. Environmental risk assessment, however, is more complex than a single catastrophic event leading to a result, as is the case in health and safety.

AMEC proposes that the risk assessment methodology be reconsidered to incorporate a conceptual site model approach. This approach uses the *source>pathway>receptor* linkage system to understand if there is a complete risk pathway. This model is used very effectively in contaminated lands management and more broadly assessment under Part V of the EP Act.

There are clear benefits of this alternative risk assessment methodology:

- It clearly rules risk pathways as being either in or out risk, significantly reducing redundant information.
- Risks are not temporally bound (i.e., if it will ever happen, whether only once or gradually over time, it is ruled in as a risk).
- It identifies unknowns quickly.
- It reduces the overall size of documents by utilising figures/tables.

The conceptual site model, along with the *source>pathway>receptor* (qualitative) model is used to understand which risks are present specifically at the project site (e.g., distance to sensitive ecological receptor; depth to groundwater). The risks can then be compared to a semi-quantitative risk assessment which is presented in the discussion paper. This combination risk assessment is much more robust process with better site understanding, thereby enabling a clearer ranking of key risks and assignment of actions/mitigations.

The development of a generic risk assessment has its benefits and allows a direct comparison between sites and allows procedural efficiencies.

The discussion paper outlines a single risk assessment process, however, a risk assessment for project development, operation and closure needs to be considered separately as the temporal

aspects of both are completely different. A simple fix would be to simply add another column with the frequency of occurrence to account specifically for closure (as below).

<i>Likelihood</i>	<i>Operational occurrence</i>	<i>Closure occurrence</i>
Almost Certain	<Once per year	One in 10 years
Likely	Once in 5 years	One in 50 years
Possible	Once in 10 years	One in 100 years
Unlikely	Once in 25 years	One in 250 years
Rare	One in 100 years	One in 1,000 years

### **Environmental and closure outcomes, performance and completion criteria and monitoring**

It is acknowledged that the outcomes are in draft format; however, there is a need for thorough review and industry engagement specifically on the wording of the outcomes. Many of the proposed outcomes overlap with other legislation and their assessment and management need not be duplicated, nor rights so assigned eroded. For example:

- Flora and fauna are factors routinely assessed in Part IV and Part V of the Environmental Protection Act 1986 (WA), the Biodiversity Conservation Act 2016 (WA) and the Environment Protection and Biodiversity Conservation Act 1999 (Cth). In the unlikely instance flora/fauna is not assessed by other legislation it is unclear how DMIRS would decide that the flora/fauna is of significance for the Mining Act to do so?;
- Similarly, the outcome “*All environmentally hazardous chemical and materials appropriately stored or managed to prevent contamination*” is managed collectively by Part V of the EP Act, DG provisions, the Contaminated Sites Act 2003, and the Work Health Safety Act

In these instances, where obligations are triggered by other legislation, why would the Mining Act 1978 (WA) be needed to regulate such items to the limit or ‘prevent’. And, even if so, how would duplication add value or further protections? There is no evidence to support that such duplication leads to improved environmental outcomes.

Outcomes should be written in a way that stipulates a desired endpoint. Some of the examples proposed in the discussion paper include actions that are needed to meet an outcome, this type of wording is more akin to completion criteria.

For example:

- “Suitable growth medium is in place and soil properties achieved to facilitate rehabilitation and agreed post-mining land use”.

Alternate wording to be an outcome, with appropriate supporting completion criteria, could be:

- “Rehabilitated land will support agreed post-mining land use”.

AMEC is concerned that the choice of language in the Discussion Paper for the outcomes is difficult to achieve. Meeting terms such as ‘prevent’, ‘No [loss, impact, increase...],’ ‘will not’ is unattainable and other verbs should be used to the industry standard such as mitigate, manage or control. Aligning language with other Departments and considering work being done by the Department of Water, Environment Regulation and the Environmental Protection Authority on standardising conditions would be valuable.

## Closure implementation

DMIRS propose that “*the MDCP will include the predicted closure cost and governance/assurance of how the cost has been calculated*”. Publishing a predicated cost is a new requirement. Companies have not had to include the closure cost in the MCP to date. Current requirements are to calculate the Life Of Mine (LOM) closure cost but only provide information on the methods/assumptions that were used to calculate, not the cost itself (unless separately requested by DMIRS).

AMEC has been told that it was clarified at the Closure Planning Practitioners Association engagement session (5 July 2023) that this aspect would be applied to a domain level or feature level, primarily to provide transparency. If this is the case, a future draft should provide this clarity.

There are many variables and models that can be used to develop a closure cost estimate. According to ICMM, there are five classes of closure estimate, from order of Magnitude (Class 5) through fully costed engineering designs (Class 1). Should this be required, DMIRS will need to provide guidance on what class of financial model is required and acceptable tolerances. Further, a domain-level model excludes the economy of scale that is afforded to a whole site closure estimate. It is recommended that a high order (Class 4/5) would be adequate at the conceptual approval stage so as not to entrain very detailed provisions for elements and infrastructure that may not have been fully designed and not built.

It should also be noted that the information being sought is already required of publicly listed companies under the *Corporations Act 2001* (Cth). The rehabilitation liability is presented in public disclosure statements to the ASX, as is required under their continuous disclosure obligations. These statements are required to be third-party audited and therefore are subject to increased accuracy.

AMEC recommends that DMIRS should consider the inclusion of the closure liability estimate from the latest public financial disclosure statement rather than requiring proponents to rehandle and reformat information unnecessarily. Industry feedback has suggested that if DMIRS hold commercially

sensitive financial information, it would need to provide certainty and an explicit assurance that information protected by the *Corporations Act 2001* remains confidential and held with the same scrutiny as the Australian Securities and Investments Commission (ASIC) in relation to this information.

Industry has noted that DMIRS administer the Mine Rehabilitation Fund (MRF) that itself includes, and relies upon, a mechanism to develop a “Rehabilitation Liability Estimate” (RLE). The equation to develop an RLE and the approvals statement is both publicly available.

If the MDCP was to apply the RLE estimator tool to project domains, it would create increased transparency and align with the requirements of the *Mine Rehabilitation Fund Act 2012*.

### **Decision on MDCP**

The wording in this section of the discussion paper seems to indicate that the approval or refusal will be based on individual activities within the project rather than for the whole operation. This section is brief, and its intent is unclear. If it is intended to facilitate expedited approvals for key infrastructure, then this is a welcome initiative. However, approving and refusing infrastructure on an activity basis may have unseen consequences and potentially lead to the loss of sight of the greater impact of the project. Greater procedural detail on these decision process would be welcome.

The discussion paper indicates that “*If activities proposed under a MDCP are refused, reasons for the refusal will be provided to the tenement holder*” (pp7) and “*To afford procedural fairness, tenement holders will be provided with an opportunity to review their Approvals Statement prior to it being formally issued*” (pp8).

Not all project proponents are the tenement holder. AMEC suggests this should be revised to consider projects where the proponent is not the tenement holder.

### **Expansion and/or alteration to an Approvals Statement**

A revised MDCP will be required to be submitted when there is a change to activity. The discussion paper says a revised MDCP is required for expansions and alterations to operations, but also that alternative approaches for minor amendments and/or small operations may be developed alongside. The discussion paper does not address potential issues with how this might work in practice. For example, revising a MCP for an operation where the current operations were originally approved by a MDCP but more recently modified by minor amendment(s).

Industry has asked a number of questions as to what is considered minor? Clarification of how principles to define what is a minor amendment would be helpful.

Greater clarity is needed on the procedure for these reforms.

### **MDCPs for small operations**

AMEC welcomes a future consultation on the template for a MDCP for small operations.

## Mine Closure Plans

The requirement to prepare a targeted planning document for closure (MCP) appears contrary to the stated intent of reducing duplication and creating efficiencies in assessment processes and approval document preparation. AMEC notes that the Mining Act still requires a Mining Closure Plan.

Once a MDCP has been prepared, why is it necessary to subsequently prepare a new document having all the same sections as the MDCP but only addressing the closure aspects? There is no legislative requirement to do so. It would be more efficient to simply continue to update the MDCP. Closure is inextricably linked to mining development but having these aspects addressed in separate documents is inefficient, counterintuitive, and clearly runs against the intent of these reforms.

Closure information becomes more comprehensive over time but can still be concisely contained in the one document. In this way, the baseline data and analysis would be supplemented with additional studies and investigations to fill knowledge gaps and there is a progressive and logical flow of information that isn't scattered across multiple documents.

The Approvals Statement is intended to be the single point of reference, even if there are multiple MDCPs and version after version of the MCP. The Approvals Statement has merit from a compliance perspective, but the detail sitting behind it remains important for proponents and operators tasked with implementing the approval.

## Approvals Statement

AMEC supports the intent of the Approvals statement. The provision of examples is welcomed as it certainly helps clarify how it will work.

This document will be extremely important for companies with multiple operations. A question from Industry has been about the pace of adoption anticipated, and particularly what support will be provided transition. Further detail of the process of how the approvals statement will be drafted and assessed is needed.

## Information recorded on an Approvals Statement

The discussion paper cites that the 'Approvals statement will define the scope and limits of activities approved'. There is concern amongst some in Industry as to how this interpretation will occur. AMEC welcomes that there is acknowledgement of procedural fairness, however, ask that there is a pathway detailed of how to manage any dispute on the Department's interpretation.

The collation of Approvals is not an opportunity for the reassessment, reconfiguration or narrowing, of past approvals given.

## Other matters

The initial consolidation of a mining proposal and MCP will be an enormous task, particularly for entities with multiple mines. This needs to be considered and an extended transition period provided to allow companies to successfully adopt this reform.



The discussion paper does not outline proposed statutory timeframes for assessment of the new MDCP and Approval Statement Process. Details on how long DMIRS anticipates the review and approval of these documents is needed.

### **Final Comment**

AMEC asks that the development of the MDCP and Approval statement does not follow the traditional DMIRS consultation model. Usually, the next step is that the Department weighs the commentary provided, redrafts sections and then publishes a final document. As AMEC's submission outlines, we consider there needs to be a fundamental reconsideration of what aspects DMIRS regulates and that this presents an opportunity for the WA State Government to achieve the outcomes set under StreamlineWA.

### **For further information please contact:**

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