

**To: Department of Energy, Mines, Industry Regulation and Safety**

**Re: Guideline for Preparing Mining Development and Closure Proposal – Review 2024**

28 May 2024

## Introduction

AMEC appreciates the opportunity to provide industry feedback on the consultation draft for the Guideline for Preparing Mining Development and Closure Proposal.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 570 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 Feedback

AMEC welcomes the advent of the MDCP Guidelines to transform and reform environmental assessments and approvals in WA. Our feedback is driven by a strong awareness of the need to eliminate duplication for both proponents and departments to reduce the cost of doing business and administrative burden. It reflects substantial feedback and interest from Industry. The following are our priority recommendations:

### 1. Clarify instructions and technical terms:

The most common issue that Industry found during this review process is the lack of explanation attached to the requirements and a lack of details defining new technical terms. The submission details examples in each section below.

### 2. Avoid duplication:

AMEC wholly endorses DEMIRS' commitment to the assessment of these factors will not need to be replicated in the MDCP. The proposed activities need to be within the spatial

boundaries and scope of the EPA assessment for this to apply. In response, AMEC recommends the following:

- Not only will assessment not be needed, no conditions of DEMIRS approval would be required as a result, because that is in-train or done by another Decision-Making Authority (DMA).
- Terms and phrases are better defined, so as to clarify the intent and requirement of MDCP Guidelines and to avoid ambiguity or confusion with similarly related terms used by other departments, such as EPA; DWER and DBCA. For example, consider renaming “activity envelope to “development envelope” to align with EP Act IV terminology. Proposals subject to EP Act should ensure that environmental impacts assessed under the EP Act are not duplicated of DEMIRS MDCP assessment and conditioning process.
- The interface between DEMIRS application of the MDCP Guidelines and Approvals Statement under Mining Act is directly aligned with the metes and bounds of other environmental approval jurisdictions, particularly those under the Environmental Protection Act of EPA/DWER and Biodiversity Conservation Act 2016 of Department of Biodiversity Conservation and Attractions. AMEC suggests this could be included in Section 4 of the Guidelines.
- Insufficient guidance and references – Industry have voiced concern about the lack of resources or difficulties with accessing additional resources when undertaking this process. AMEC encourages the Department to provide case studies or exemplary information from previous years for better explanation to proponents. Similarly, the draft MDCP guidance document contains in text citations without full reference to aid the reader. A full reference list at the end of the document is strongly recommended.

### **3. Continue to work with Industry to refine the content of Appendix 4:**

The DEMIRS Standard Outcomes will be fundamental to the success of contemporary implementation and future assurance under the MDCP program. The definitions cited in many cases are absolutist; subjective, overly prescriptive and/or likely erode other assigned rights authorised by approvals granted by other DMAs. We would welcome an opportunity to provide further feedback to DEMIRS to resolve these standards to make them achievable and implementable and provide risk managed holistic environmental outcomes that meet approval conditions.

Also, Industry has suggested emerging trends in landscape ecohydrology indicates that closure and rehabilitation criteria as stated in the draft may not be met. A focus might instead be given to trends or rates as adopted targets rather than absolute attainment. This area requires more technical work, and it could be informed by that of CRC TIME.

## Feedback for Content

The following feedback is provided for each Section and is listed in dot point form to provide ease of consideration.

### Section 1 Preparation of a Mining Development and Closure Proposal

AMEC requests further clarification for the following:

- Regulatory context: How would the Environmental Objectives Policy for Mining differ from those under the Environmental Protection Act? There is a risk of conflicting objectives.
- Administrative Procedures: Although the Environmental Application Administrative Procedures were released in June 2023, the Guideline still refers to the Mining Proposal Guidelines. Will these administrative procedures reference be updated in the MDCP?
- The Approval Statement: How will it relate to the MDCP, and the level of detail needed. The indication of the Approval Statement to support the MDCP means that this also needs to be clearly described concurrently.
- Amendment to Tenement Conditions: Will approval statements be reflected in the amendment to tenement conditions? How would proponents access a review of the statement?
- 1.4 Mine Closure Plan (MCP): Does the MCP require all the common information from the MDCP/MP, or is a cross-reference sufficient? If not, this raises the potential of detail of closure info between MDCP and also again in the MCP.
- 1.5 Small Mining Operations: Could transmission lines, solar, and wind farms be considered Small Mining Operations? Unless specifically supporting a particular mine site and included in an original MDCP submission, and while it would seem the level of impact and level of closure.
- 1.6 Substantial Change: Examples are needed to explain what 'expansions or alterations' will trigger a new MDCP. Please clarify what constitutes a 'substantial change' for this purpose.

#### AMEC recommends the following:

- 1.5 Small mining operations: the term “small mining operation” should be clearly defined and differentiated from other forms of operations. Reference to the distinct form is also needed.
- 1.6 Amendments to information recorded on an Approvals Statement: this section requires further explanation. Specifically, mining activities could encompass a wide range of activities, from exploration, production to closure. List the specific activities intended to be reported, and the type of mining involved.

## Section 2 - Contents of a Mining Development and Closure Proposal

- Industry feedback suggests that Section 2 is redundant and should not be a standalone section. AMEC suggests that integrating the content to another section.

## Section 3 Description of Proposed Mining Operation

AMEC requests further clarification for the following matters:

- DEMIRS requests proponents to provide a summary of the entire operation as context for the approvals. Please outline the elements of information required from proponents as well as administrative information such as cut-off dates and timeframes.
- 3.1 Proposal Description: elsewhere, AMEC suggests a framework to assist DEMIRS to ensure that there is no regulatory duplication between Part IV EP Act approvals and the Approvals Statement? In short, the Proposal Content Document required under Part IV of the EP Act requires the proposal description include elements during each stage of the mine life, including rehabilitation and closure.
- 3.4 Activity Details: will proponents be required to give information for both of maximum disturbance areas? (but be able to incrementally develop smaller areas).

Additionally, define terms:

- Provide more context for the term “construction”. How it is applied and what does it entail? How does one differentiate between maintaining and building since both activities could be considered a “construction” activity.
- The term “appropriate” is highly objective in “Where appropriate the proposed activities in Table 1 should be defined using the categories presented in Schedule 1 of the Mining Rehabilitation Fund Regulation 2013”– supply scenarios where activities are deemed appropriate. A case study may help.
- 3.5 Additional Information: presenting a case study would be helpful. Not all activities have reports or the same level of details. Whether a surface water diversion will be included in high risk engineered structure also needs clarification.

AMEC recommends the following:

- DEMIRS and EPA/DWER should detail how interagency jurisdiction between DEMIRS and DWER will be determined and applied. This will avoid irregularities and duplications.
- 3.2 Activity envelope: consider renaming “activity envelope to “development envelope” in line with EP Act IV terminology. Proposals subject to s38 EP Act should ensure that

environmental impacts assessed under the EP Act are not duplicate of DEMIRS MDCP process.

- 3.2 Activity Envelope: It indicates that a risk-based approach to environmental impact assessment will be undertaken; however, the example provided does not appear to account for risk and requires 100% coverage in survey efforts. These two concepts do not align, and the use of the example should be reconsidered. Rather than stipulating a survey, it is recommended that DEMIRS present an example explaining how the survey effort is determined.
- 3.3 Site Plan – ensure there is sufficient space in the activity details table for proponents to present information about exclusion buffers.
- 3.4 Activity details: MDCP should include a written description of the proposed mining activities detailing relevant construction, design, and operational requirements. Please beware of possible duplication as members have pointed out similarities to section 3.1.
- 3.4 Table 1: consider adopting term “Total proposed activity area (ha)” instead of “Total activity area (ha)” if only referring to areas with proposed activity underway. Additionally, please explain “Tenement purpose,” including the requirements from proponents and how the information should be presented.
- The Guideline does not have sections dedicated to high risk and complex mining activities which means proponents do not have the opportunity to provide sufficient information. AMEC recommends the Department to create a table for High-Risk Activities and Complex Mining Activities, matching the formats of Table 2 or, incorporate high risk and complex mining activities as a component of risk assessment 3.5.
- Additionally, AMEC would encourage DEMIRS to include supplementary resources to support the Guideline users, including references and links to external information.
- Closure Design section: “Design concepts” implies that no detail is required, but second dot point asks for “Initial detail diagrams...”. Please change to “Conceptual diagrams...”, or similar term.
- Further, with reference to the statement “...project should demonstrate key landforms can be successfully rehabilitated...”, this cannot be “demonstrated” until proposed methods have been implemented.
- Please change statement to “...project should provide enough information to indicate key landforms can be successfully rehabilitated ”.

## Section 4 Legislative framework

AMEC believes that a fundamental to streamlining and reform in WA's environmental regulation is provision of hard interfaces between departmental administration of its legislation. This should be done by recognising the Guidelines and Guidance which, for major projects, already exists via Part IV of EP Act and other legislation. AMEC welcomes the DEMIRS Guideline text that reads:

*“Assessment of these factors will not need to be replicated in the MDCP. The proposed activities need to be within the spatial boundaries and scope of the EPA assessment for this to apply.”*

DEMIRS MDCP Guidelines should, though, provide guidance as part of the Approvals Statement framework; while recognising other precedent Authorities to give proponent certainty and assign rights in planning and design; and facilitates WA government streamlining.

Details should be given in the MDCP Guideline of where the key interfaces are with other DMAs, and how they do or don't effect or affect DEMIRS requirements of MDCPs and their Approvals Statements.

Clarification of the association and relationship between DEMIRS factors for Mining Proposal/MDCP and EPA/DWER (and DBCA) factors for EIA and their approvals is of critical importance as shown below:

DEMIRS	EPA/DWER under	Instrument	DBCA
<i>Land and Soils</i>	Terrestrial Environmental Quality; Landforms	Pt IV; Pt V EP Act CS Act	-
<i>Water Resources</i>	Inland Waters	RIWI Act; PtV EPAAct	-
<i>Biodiversity</i>	Flora and vegetation; Terrestrial Fauna; Subterranean Fauna	Pt IV; Pt V EP Act Pt IV Pt IV	Listed flora BC Reg Listed fauna BC Reg
<i>Rehabilitation and Mine Closure</i>	-	Pt IV (as required)	-

Note that themes of **Sea, Air and People** are also considered under assessment by EPA/DWER.

Figure 1. Proposed interaction between DEMIRS and those of other agencies

In relation to the content of other assessments and approvals, there are many Environmental Factors (using different terms) that may be considered by other DMAs (EPA; DWER; DBCA) in relation to similar DEMIRS factors; and if they are deemed assessable these are often done before any Mining Act decision is or can be made.

Where these other instruments exist or are required, there is no need for imposition of additional assessment or MDCP approval conditions. Table 3 in Section 4 welcomes to advice about parallel

approvals and it is AMECs view is that upon review DEMIRS would hold their assessment in abeyance. Alternatively, if necessary, depending on timing conclude its approval conditioning by citing an assessment and/or approval under the other jurisdiction.

In relation to Section 4, AMEC's recommendations are that:

- where primary or other DMA conditions exist, those prescribed approval conditions are acknowledged by DEMIRS, and no other DEMIRS Standard Outcome need be stipulated as the significant matters are determined elsewhere within WA's jurisdiction. It may be the case that DEMIRS chooses to replicate the same conditions of the primary approval in its MDCP Approval Statement.
- Where other approval instruments (e.g. NVCP; industry scheduled activity licensing; water licence etc...) applies, only those DEMIRS Standard Outcomes to be applied are additional to managing a residual risk rated as being moderate or higher. Industry will provide further feedback on rating low residual risks as unremarkable and not worthy of conditions within MDCPs, but dealt with by implementation of subordinate best-practice/due-diligence site based plans;
- DEMIRS MDCP approval should not be duplicative not different in content of conditions, requirements or outcomes for activities otherwise authorised by other instruments of regulation by EPA, DWER or DBCA. It is akin to Heritage being considered by DPLH and, if required by the developer, authorised accordingly by aboriginal heritage Ministerial consent.

Furthermore, AMEC requests further clarification for the following:

- The statement: "...As far as practicable, DEMIRS will not duplicate assessment of any component of an activity that also requires approval from another regulatory agency". Industry would like to understand how this is achieved, particularly when considering and comparing EPA Environmental Factors to DEMIRS environmental factors. If it is practicable to know that an assessment or approval is duplicative, why would it be chosen to be done? A mechanism to avoid duplication has been proposed above.
- "Legislation that may be relevant" includes Dangerous Goods Safety Act and the Health Act (for example). This and other legislation listed are generally not considered relevant to "environmental approvals" and therefore generally irrelevant to the intended framework. Some clarification may be required to define which aspects of each piece of legislation may be relevant, otherwise it will be left to interpretation.
- Section 4.2 All dot points are aspects that could or should be considered as part of the Application of NVCP. If indirect considerations have been included in NVCP application,

confirm these will not require further assessment, regardless of whether they are conditioned in the NVCP.

## Section 5 Baseline data and analysis

AMEC requests further clarification for the following:

- 5.1 Environmental and social setting: the concept of environmental and social sensitivity is introduced in this section; however, no further definition is provided.
- 5.3.1. Soils: expand on “potential of soil pathogen” by using reference to external sources and clarify the maximum number of samples required.
- 5.3.2 Subsurface materials and mining waste: the criticality of undertaking characterisation testing is unclear.
- 5.3.3 Rehabilitation material balance: block model output is a new requirement, not in existing MPs. Detail as to why this new requirement exists is sought.
- Section 5.3.2 Subsurface materials and mining waste:
  - Table 6. Modelled maximum quantity is repeated.
  - A section for subsurface material to be used for growth media should be added to this section.
- 5.4 Water resources:
  - Identify the baseline details required. The information required to determine site specific triggers require at least two years surveys which may not be possible for projects.
  - Only salinity and pH are required for water quality characteristics. How should contamination risk be determined if a surface water baseline concentration of anion, cation and metals is not determined?
  - It is unclear what additional information would be required for diversion structures.
- 5.5 Biodiversity: how will DEMIRS ensure that biodiversity factors that are assessed and regulated through Part IV are not duplicated under a MDCP approval statement. DEMIRS should be consistent with EPA’s recommendation and advice.

AMEC recommends the following:

- Define the concept of environmental and social sensitivity in the context of the MDCP or provide a link to existing sources if previously mentioned in other documents. Provide in depth guidance regarding affected communities and social settings beyond what is already understood in relation to stakeholder engagement.



- Clarify the requirements needed for 5.3.2 Subsurface materials and mining waste – Characterising testing.
- Reformat Table 6: should not have quantities of soils, these should be in section 5.3.1.
- Include a requirement for a map outlining surface after infrastructure.
- In cases where overburden will be used as growth media, only then it should be assessed for, dispersity, fertility.

## **Section 6 Stakeholder engagement**

AMEC requests further clarification for the following:

- Section 6 highlights the importance of stakeholder engagement but does not have supporting reasons for why the Department requests for this.
- 6.1 Risk treatments: when a MDCP includes high or above inherent risk pathways or risk pathways associated with long-lag risks, it may be of benefit to include a written description of these risk treatments in addition to the risk register”. Please provide information on where this information should be included.

AMEC recommends the following:

- Include an in-depth explanation of how DEMIRS utilises and assesses stakeholder engagement evidence and its intended purpose.
- Reference to Table 6 on Page 26 is incorrect and should be updated to refer to Table 9.

## **Section 8 Risk assessment and management**

AMEC requests:

- That the Section is redrafted to make it clearer.
- Clarification is provided as to whether the DEMIRS framework compulsory? If not, how flexible are the tools used in risk assessment?

AMEC recommends the following:

- AMEC recommends incorporating Appendix 3. into this Risk Assessment Section and avoid using general statements so it is clearer in the outcomes sought.

## Section 9 – Environmental and closure outcomes

- The guideline states that risks managed by other legislation(s) are excluded from the MDCP process, however, many categories reflected in Standard Outcomes in Appendix 4 are accounted for by other DMAs.
- *“For many mining operations, DEMIRS standard environmental and closure outcomes will be adequate to document the outcome that will be achieved.... in some situations, the MDCP may need to include site specific outcomes”*. This is understood but, it important to acknowledge that should a site-specific outcome be adopted - in effect as a stricter approval condition – that the standard outcome is then sunset.
- It is agreed that *development of completion criteria should commence upfront at the project approval stage and be reviewed and refined in MCP revisions throughout the mine life to respond to monitoring, research and trial information and any other information or change as appropriate*. The corollary to this proposition is that MDCP original submissions will necessarily be based on conceptual designs and techniques (that are sensible and reliable; but not necessarily proven).

AMEC recommends that it could either work with DEMIRS, or provide further feedback, to refine the stipulations of standard outcomes in Appendix 4 that would apply for meeting the requirements of MDCP/Approvals Statement.

## Section 10 Monitoring

AMEC requests further clarification for the following:

- This section requires the same level of detail as the standalone MCP. This is not only results in a large document, which is likely to lengthen assessment timeframes, but also runs the risk of conflicting information between the MDCP and DEMIRS. Please explain the reasons behind the duplication.

## Section 11 Closure implementation

AMEC recommends the following:

- Provide criteria for assessing the mine life as the current information is not sufficient. Please also include a feasible solution, or examples of what DEMIRS expects to see.

This information broadly overlaps with the requirements of a care and maintenance plan required under the *Work Health and Safety (Mines) Regulation 2022* and includes dangerous goods requirements.

## Appendices

The following comments received from Industry relate to the appendices:

### Appendix 1 – MDCP Scoping Document Template

- Consideration of environmental factors and scope of work – please update methods with “detailed flora and fauna surveys”.

### Appendix 2 - Example landform summary table

- Geotechnical design report: outline the information DEMIRS expects from proponents.

### Appendix 3 – DEMIRS environmental risk assessment framework

- Example landform summary table - references to the steps within the hierarchy of control are inconsistent throughout this section.
- Step 4 – Risk Treatment: explain how “high frequency low consequence events” and “low-frequency high consequence events” for the same risk pathway should be captured in the Risk Assessment?
- Step 5 – Risk register: please reconsider the use of “Risk register”. This term is misleading because it can be interpreted as a standard list of risks and controls that a proponent must follow.

### Appendix 4 – DEMIRS standard environmental and closure outcomes

As stated earlier, AMEC would welcome an opportunity to provide further feedback on the wording in Appendix 4. The following comments reflect Industry feedback received:

- The proposed Standard Environmental and Closure Outcomes are essential to the MDCP outcomes and Approvals Statement yet in some places they use very restrictive language, which is absolutistic or subjective. This is detrimental to the intention of the outcomes and may potentially make them impossible to comply with or to enforce. For example, wording such as: ‘All suitable topsoil...’ and ‘Prevent all direct impacts to fauna etc’. Please revise the specific terminologies to ‘minimise’ or ‘manage’, similar to that used in Biodiversity Item B2.0.
- The guideline states that risks managed by other legislations are excluded from the MDCP process, however, the first category from Standard outcomes in Appendix 4. is Land contamination which is managed by DWER under *Contaminated Sites Act 2003*.

Other examples of changes to phraseology for certainty:

- **Water resources W1.0**

Consider rewording the outcome to read “The quality and quantity of surface water is not impacted as a result of mining activities”. The other surface water outcomes including W2.0, are more specific to the receptor and W1.0 could therefore be removed without reducing the quality of the outcome selection.

- **Fauna B3.0**

“Mining activities undertaken in a manner that prevent all direct indirect impacts to native fauna outside of the activity envelope”. There will invariably be fauna that has a range extending over and outside the mine tenure. Given there will always be disturbance to vegetation and landforms, it would be impossible to prevent all impacts.

- **Environmental threats (introduced Animals) B6.0**

The require for “no increase in diversity, distribution and population weed species and pathogens within the tenants” is difficult to achieve because most tenements are on pastoral leasehold, or near publicly accessible areas such as public roads. Pathogens and weeds classifications are also broad, encompassing a wide range of species and can transmit very differently.

Industry recommends narrowing the scope of this goal and identify specific pathogens. Some temporal changes to weeds and introduced fauna are also inevitable during a mining activity. Similarly, species may be introduced by others sharing the tenement. The current proposed wording is too restrictive and unachievable.

- **Biodiversity B1.0**

The outcome should be broadened to exclude legal land clearing that occurs either inside or outside of the activity envelope. Land clearing is often necessary for legal reasons, such as fire breaks and this may be misinterpreted by proponent as a breach of outcome. Thus, it is recommended that DEMIRS reword the outcomes description.

- **Biodiversity, Flora, and vegetation B2.0**

Native vegetation clearance is expected as a part of approval, under the condition that it is done in an appropriate manner and obeys existing regulatory requirements.

Further clarification is needed on “unauthorised” impacts because this outcome seems unrealistic.

- **Rehabilitation and mine closure, Geochemical stability C4.0**

Pollution and contamination are managed by Environmental Protection Act 1986 and the Contaminated Sites Act 2003 respectively. Therefore, a general outcome statement would be more suitable, for example, “Constructed landforms are geochemically stable and mine drainage will be managed to prevent impact to environmental value and/or post mining land use.”

- **Rehabilitation and mine closure, Infrastructure 15.0**

DEMIRS need to provide more examples to enhance the section’s enforceability. Closure outcomes should be generic and flexible in the MDCP and Approvals document. This will allow the MCP to contain the specific and detailed closure outcomes to be regularly updated.

### **Format**

The design and format of a document can significantly influence its reception, utility, and application. Industry feedback has suggested that the Department amend certain stylistic choices in the Draft Guideline to enhance user-friendliness, including:

- Ensuring consistency in font styles, sizes, and spacing throughout, particularly within tables.
- Proportionately dividing sections and headlines to maintain consistent spacing between points, subpoints, and footnotes.
- Streamlining accessibility by incorporating embedded links for external documents and websites.
- Maintaining consistent colour schemes for tables and appendices.

### **Conclusion**

AMEC welcomes an ongoing discussion with DEMIRS regarding the content the Draft Mine Development and Closure Proposal Guideline. The content of this document is important, and how it is drafted will have a long term impact on the mining industry.

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

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