Submission No 13

PERFORMANCE OF THE REGIONAL INVESTMENT ACTIVATION FUND AND THE REGIONAL JOB CREATION FUND

Organisation: NSW Minerals Council

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Legislative Committee on Investment, Industry and Regional Development - Inquiry into the performance of the Regional Investment Activation Fund and the Regional Job Creation Fund.

NSW Minerals Council Submission – October 2023

Please find attached the NSW Minerals Council (NSWMC) submission.

Comments are contained to challenges in the planning system and potential impediments to growth in regional NSW as they relate to the mining industry.

NSWMC represents the NSW mining, exploration, minerals processing and mining services industries in NSW.

Mining underpins the strength of regional economies across NSW and has significant flow on benefits to other industries.

The NSW mining industry:

- Provides metals and minerals critical for delivering renewable energy, electric vehicles, and other new and emerging technologies
- Is by far the state's largest export industry by value, with coal, copper ore and concentrates and gold exports having a combined value of over $46 billion in 2020/21
- Directly employs around 40,000 people predominantly in regional NSW, and supports the jobs of many thousands more people indirectly
- Directly spent $16.7 billion on goods and services, wages and salaries, local government payments and community contributions in NSW during 2021/22
- Supports almost 7,000 supplier businesses throughout NSW, the majority of which are located in Regional NSW

- Mining royalties are forecast to deliver the NSW government $13.2 billion over the next four years, including $2.7 billion from higher royalty rates to be introduced from 1 July 2024

NSW Mining - Regional Opportunities and Planning Challenges

The NSW 2040 Economic Blueprint and a number of the NSW Government's Regional Economic Development Strategies highlight the significant economic opportunities associated with: existing operating and potential future mines in NSW, particularly metals and minerals mines; the wide range and evolving nature of industries and businesses which support and complement mining operations; as well as the potential beneficial reuse of rehabilitated mine sites once operations have ceased.

In addition to the extensive benefits generated by the continued demand for resources currently mined in NSW, global trends such as meeting energy transition targets are driving significant increases in demand for a range of other minerals and metals. It is widely accepted that meeting these global energy transition targets will require a significant increase in mining, including critical minerals and rare earths in the short to medium term.

NSW has a wide range of minerals and metals resources, and is well placed to take advantage of these emerging demands to further build and diversify the NSW mining sector. The increasing demand for new metals and minerals will also open up other potential opportunities such as downstream processing of resources.

In order to maximise these opportunities NSW must have a stable and predictable planning regulatory environment that supports economic investment in our regions. New jobs and investment will go elsewhere, potentially to other Australian states and international jurisdictions where governments are actively pursuing new investment opportunities.

Planning Approvals for Mining Operations

Mining project assessments are some of the most heavily scrutinised and regulated in NSW. The assessment process which can take 2-3 years or more includes: obtaining advice from multiple government agencies at both the State and Commonwealth levels; engagement of independent experts to peer review sensitive aspects of projects and critique assessment reports commissioned by proponents; extensive consultation with local communities and First Nations people; and involving multiple refinements to the project design responding to issues raised by the community, government agencies and independent experts.

Most recently the McPhillamys Gold and the Bowdens Silver projects took 3 years and 2 years respectively for the assessment and determination processes to be finalised.

Despite the lengthy, comprehensive and rigorous assessment process undertaken by the Planning Department (DPE), approval is not necessarily certain.

Projects can be refused by the Independent Planning Commission (IPC) despite being recommended for approval by the DPE.

The most recent examples of IPC refusals which were recommended for approval with broad agreement amongst multiple government agencies include (amongst others):

- Martins Creek Quarry refusal - recommended for approval (6 years of assessment)
- Dendrobium refusal - recommended for approval (1.5 years of assessment)
- Glendell refusal - recommended for approval (2. 5 years of assessment)

Independent IPC Commissioners, which are not subject to direction by the Minister for Planning, also have the power to impose outcomes on projects that aren't necessarily consistent with existing government policies, or effectively craft policy where Government policy is not sufficiently clear on a particular issue.

It's critical that NSW maintains a stable and predictable planning assessment framework as a key economic lever to attract investment into NSW.

The NSW Government should ensure there are clear strategies and policies in place for key industries, particularly those identified as engine industries or potential emerging industries. This should include strategic statements for all mining activities, and particularly critical minerals and metals mining and associated support industries which are critical for meeting energy transition targets.

Consideration should also be given to prioritising certain classes of projects which are critical for delivering on NSW Government priorities. For example certain minerals and metals mines could be given Critical State Significant Infrastructure status which would streamline the assessment process. Strategic plans and streamlined regulatory frameworks should also be developed for the reuse of rehabilitated mine sites once mining activities have been completed (see discussion below).

Where projects are put forward that accord with the Government's strategic objectives, the planning assessment and approval framework should be focussed on enabling such activities to occur in a certain and timely manner.

Avoid duplication of GHG assessment requirements

As the policy framework for climate change evolves at State and Commonwealth levels, a range of questions are arising in relation to assessment requirements for development applications, and the policy framework that guides decision making.

With multiple mining projects within the planning system, and new projects regularly entering, it's important these issues be clarified rather than leaving each project subject to uncertain and potentially inconsistent requirements.

Of particular concern is the potential policy duplication between a NSW climate change policy framework and the Commonwealth Safeguard Mechanism. An integrated, national climate change policy is the most efficient way to meet Australia's international commitments on emissions reductions. Whilst NSW's targets are acknowledged, for projects that are covered by the Safeguard Mechanism, emissions reduction requirements should be aligned with the national approach to the greatest extent practicable, and unnecessary duplication avoided.

Planning challenges around the reuse of rehabilitated mine sites

Reuse of rehabilitated mine land offers significant opportunities to accommodate a range of alternative and beneficial land uses, including renewable energy projects. In the Hunter Valley for example, there are large areas of previously disturbed land under rehabilitation, and further areas of disturbed land awaiting rehabilitation. Mining areas also have access to existing infrastructure including rail, road and transmission line infrastructure.

However, as more mining operations reach the end of their operating lives, experience by companies is highlighting complexities within the existing planning approvals framework, particularly in terms of enabling other land use opportunities and/or associated landforms in the most effective way possible.

For example, obtaining approvals for renewable projects on rehabilitated mining land is overly complex, timely and legalistic, particularly when compared to the comparatively easier alternative of obtaining approval for a renewable project on normal farming land. Examples of challenges include:

- Two development applications being required: a modification application of the existing mine consent to change the rehabilitation commitments; and a second development application for the renewable energy project given it's a new and separate land use.

- Modifying the existing mining operation approval requirements is not straightforward. The existing approval obtained decades earlier locks in outcomes around the landform and land use for the rehabilitated mine areas. In addition to time and resources, there is a risk the government will not agree to the proposed modified outcomes, or will impose more onerous and costly requirements than those required under the original consent. There is very little flexibility to this approach, irrespective of the broader benefits or objectives that may be obtained through pursuing alternative land uses.

- Resolving relinquishment and ongoing liability requirements under the Mining Act for rehabilitated lands is complicated. The optimum outcome to enable development of rehabilitated mine land would be to relinquish and sever the area from the mine lease making it clearer in terms of responsibility for ongoing obligations and liability, thus making it easier for third party operators to be involved with a project. If the mine lease is not relinquished any alternative land use development becomes significantly more complicated due to the mine lease obligations and liabilities remaining in place which would need to be managed, including identifying who has ongoing responsibility.

Challenges around planning approvals, ongoing Mining Act obligations and liabilities make it difficult for third parties to propose or be involved with alternative land uses over rehabilitated mine lands, particularly where it was previously disturbed. I.e. Why would a solar farm developer/operator take on the planning approval complexities and expose themselves to potential long term liabilities associated with the mining operations when they could lease/purchase unencumbered farmland elsewhere?

NSWMC has been a long-term advocate for changes to the current planning framework to provide mining operations with greater flexibility on post-mining land use. Such changes should enable mining operations to efficiently amend their existing post-mining approval requirements in response to community needs so local mining communities receive the best possible outcomes in a timely way once mines reach the end of their operating lives.

Whilst it's understood appropriate checks and balances must be maintained, consideration should be given to decluttering the regulatory framework as it applies to the reuse of rehabilitated mine sites, particularly the relationship between planning approvals and mine lease requirements. This should include taking a more flexible approach to rehabilitation requirements around planning conditions and relinquishment of mine lease areas and making it less cumbersome to respond to changes in land use /landform that may arise as result of an alternative land use. Further guidance should also be provided on the regulatory processes for using a previous mine site for alternative uses , including renewable projects.

NSWMC
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