

## Monica Loftus

---

**From:** George Woods  
**Sent:** Thursday, 6 February 2020 3:25 PM  
**To:** Portfolio Committee 7  
**Subject:** Document I forgot to table  
**Attachments:** 017. MP19\_420 - 12 June - Meeting with NSW Minerals Council.pdf  
**Categories:** Bill inquiry

Dear Monica

I referred during my evidence to a document that Lock the Gate had obtained under GIPA wherein the Department of Planning discusses the issue of "accounting" and "responsibility" for downstream emissions.

I realised that I should have tabled it.

I attach it here and I would appreciate it if you could provide it to the Committee to aid their deliberation in the inquiry into the Territorial Limits Bill.

Thanks very much

Georgina

--

Georgina Woods



Briefing Note | Minister for Planning and Public Spaces

Meeting with NSW Minerals Council

**Date: Wednesday 12 June 2019**

**Time: 4:15 pm**

**Venue: TBA**

**Attendees:**

**NSW Minerals Council:** Stephen Galilee, CEO, NSW Minerals Council.  
 Andrew Abbey, Policy Director, NSW Minerals Council.  
 David Frith, Policy Director, NSW Minerals Council.

**Purpose of meeting:** Policy issues facing the mining industry

## Summary

---

The NSW Minerals Council intends to discuss mining and planning policy

The NSW Minerals Council (NSWMC) has sought a meeting with the Minister to discuss its concerns on a number of policy issues facing the NSW mining industry. The issues are summarised below, and contentious issues briefs have been prepared for each issue in **Attachments A, B, C and D**.

### Land and Environment Court (LEC) decision on the Rocky Hill Coal Project

The NSWMC is concerned about the LEC decision and its implications for current and future coal mining projects. NSWMC is requesting that the Government take steps to stop the consent authority from considering downstream greenhouse gas (GHG) emissions as is required under the current statutory framework. There are a number of issues with the NSWMC interpretation of the decision which are detailed in **Attachment A**.

The request to limit the consent authority presents a complex problem as it would likely require significant statutory changes, including an amendment to the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that would be controversial and strongly opposed by community and environmental stakeholders. The Department does not consider that statutory changes are required as issues raised by the NSWMC relating to assessment certainty could be adequately covered through the development of guidance that addresses how impacts of downstream GHG emissions are assessed. Such guidance could also communicate that the Government does not mandate the offsetting of any GHG emissions. Further advice on this issue is being developed by the Department.

### Planning policy and assessment timeframes

A number of reforms and processes have been implemented by the Government that have led to significant reductions in assessment timeframes and the NSWMC supports the approach taken to improve timeframes to date. Some recent slippage in timeframes is evident for more complex projects such as the Bylong Coal Project, however the Department is keenly aware of this and is committed to achieving end-to-end timeframe reductions for all projects (see **Attachment B**).

### Independent Planning Commission

The NSWMC supports the establishment of the Independent Planning Commission (IPC), however it has identified a number of concerns which it views as requiring careful management to ensure the assessment process remains fair, robust and does not increase timeframes. The Department and IPC have implemented a number of policies and processes that should address NSWMC's concerns (see **Attachment C**) and is continuing to closely monitor assessment processes.

### Rehabilitation and mine closure

The NSWMC is critical of a number of Government reforms relating to mine rehabilitation and closure that were being developed over the last term of Government. It is important to note that other than an update to the Resource Regulator's Rehabilitation Cost Estimate tool, none of these reforms have been finalised or implemented to date. Much of NSWMC's criticism focuses on what it views as regulatory duplication and 'competition' within the Department. This overlap is an artefact of poorly differentiated roles and functions under the EP&A Act and the *Mining Act 1992* and the Department agrees with NSWMC that improvements in this area can be made (see **Attachment D**).

### Consultation

The Department's Planning Services, Legal and Policy and Strategy Divisions were consulted in the preparation of this brief.

### Attachments

<b>Attachment</b>	<b>Title</b>
<b>A</b>	Contentious Issues Brief – Rocky Hill LEC Decision
<b>B</b>	Contentious Issues Brief – Planning Policy and Assessment Timeframes
<b>C</b>	Contentious Issues Brief – Independent Planning Commission
<b>D</b>	Contentious Issues Brief – Rehabilitation and mine closure

**Departmental approval and contact**

<b>Approver</b>	<b>Position</b>	<b>Date approved</b>
Stephen Barry	Director, Resources Policy	30/05/2019
Luke Walton	Executive Director, Resources Policy and Reform Implementation, Policy and Strategy	31/5/2019
<b>Final Approver</b>	<b>Position</b>	<b>Date approved</b>
Marcus Ray	Deputy Secretary, Planning Services	31/01/2019
Signature		
<b>Contact Name</b>		<b>Phone number</b>
Stephen Barry		

## Attachment A

### Contentious Issues Brief – Rocky Hill Land & Environment Court (LEC) Decision Summary

On 8 February, the LEC upheld the Independent Planning Commission's (IPC) refusal of the Rocky Hill Coal Project. The LEC found that the project would have significant and unacceptable planning, visual and social impacts and that the project could be refused for these reasons alone. The LEC also considered that the project's greenhouse gas (GHG) emissions added further weight to these reasons to refuse. The NSW Minerals Council is concerned about the validity and appropriateness of the GHG-related reasons for refusal and implications for the assessment and determination of current and future mining projects.

#### NSW Minerals Council Position

The NSW Minerals Council (NSWMC) seeks statutory and policy certainty from the NSW Government by stopping the consent authority from being able to consider scope 3 emissions.

#### Issue 1 – The LEC approach double counts scope 3 emissions

NSWMC states that the approach taken by the LEC relied on an accounting scheme that 'double counts' scope 3 emissions, is 'inconsistent with the Paris Agreement' and is not mandated by NSW or Commonwealth Government policy.

#### Suggested response

- The Department notes that if there were legal flaws in the reasoning of the LEC it was open to the applicant to appeal the decision and the applicant did not do so.
- NSWMC's concerns about the consideration of GHG emissions which are subject to another jurisdiction's planning and/or accounting framework, are noted, particularly with regards to mitigation and abatement. However, these are matters which should be highlighted by a proponent in their development application and in relation to which evidence should be provided to the consent authority to enable a robust assessment.

#### Background

- The NSWMC has conflated obligations under international and national GHG accounting frameworks with the assessment of impacts associated with projects under the EP&A Act.
- Further, NSWMC appears to have misunderstood how the term 'double counting' is applied to GHG emissions under the Paris Agreement. 'Double counting' refers to two or more entities claiming the same emission reduction to comply with their mitigation targets. The rules set out under the Paris Agreement with respect to 'double counting' seek to avoid the risk of counting mitigation benefits twice as this could jeopardise the integrity of the Paris Agreement. The Paris Agreement does not refer to double counting of scope 3 emissions in the context that the NSWMC has put forward.
- NSWMC has a valid argument in that a project's scope 3 emissions may be considered in another jurisdiction's planning and/or accounting framework. Nevertheless, these emissions are a consequence of the proposed development and are therefore a relevant consideration under the EP&A Act - the weight to be given to them is a matter for the consent authority to determine. While the matter is relevant, it does not make them necessarily determinative.
- To date, mining project development applications have not provided adequate detail on the consequence and mitigation of scope 3 emissions and this lack of relevant information was a factor in the Rocky Hill decision (the LEC, as with any consent authority, can only assess and determine an application based on the evidence before them).

- More recently, the IPC in its assessment of the Hume Coal Project found that the applicant had not appropriately considered or assessed the full impact of emissions as required by the EP&A Act, including the provisions of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP).

## **Issue 2 – The consent authority should not consider overseas emissions**

NSWMC is concerned that the LEC considered GHG emissions that occur overseas and are beyond the control of proponents in its refusal.

### **Suggested response**

- The consideration of scope 3 emissions in development assessment processes is well established in many other jurisdictions and has been a factor in the assessment of mining projects in NSW since the commencement of the Mining SEPP.
- The EP&A Act requires the consent authority to take into account the provisions of the Mining SEPP which in turn requires the consent authority to consider an assessment of downstream GHG emissions.
- In addition, the EP&A Act also requires the consent authority to consider the likely impacts of a development on the environment and the public interest which is taken to include consideration of the principles of ecologically sustainable development (ESD). The principles of ESD, particularly inter-generational equity and the precautionary principle have been held to support the consideration of the impact of a development on climate change in previous legal proceedings.
- An issue identified in the Rocky Hill case was that adequate information on GHG emissions was lacking and it was this absence of evidence that contributed to the LEC finding this to be a further ground for refusal of the development application.
- The NSW Government recognises that abatement and mitigation measures for scope 3 emissions for most coal mine projects are primarily the responsibility of overseas entities and would consider this in the development of any policy response to the issues raised by the Rocky Hill decision.
- It should be noted however, that some fossil fuel companies have made commitments to better consider their scope 3 emissions, including Shell, who have committed to reducing their total carbon footprint which explicitly includes reducing their scope 3 emissions.

### **Background**

- NSWMC has presented a contradictory position with respect to this issue. On the one hand it wants the consent authority to consider market substitution and carbon leakage (which involves consideration of activities overseas) as reasons to not refuse mining projects, but on the other hand it does not want the consent authority to consider GHG emissions overseas.
- Regardless, the EP&A Act does not prevent a consent authority considering impacts and benefits associated with projects outside NSW's jurisdictional boundaries in certain circumstances and as such the consent authority is able to consider relevant information relating to both market substitution/carbon leakage and overseas scope 3 emissions.
- However, the consent authority can only consider information and any justifications where they are submitted with a development application.

### **Issue 3 – Implications of the LEC Rocky Hill decision are significant**

NSWMC is concerned about the implications of the Rocky Hill decision for current and future projects (including non-resource projects). These implications may include legal challenges, project refusals and costs and delays associated with providing more detailed information on GHG emissions and climate change.

#### **Suggested response**

- The Government notes NSWMC's concerns regarding the implications of the decision for current and future projects but does not necessarily agree with the proposed course of action to address such concerns.
- Whilst the decision may be influential, it does not bind future consent authorities because Rocky Hill was a merit appeal which does not create a legally binding precedent.
- The findings of the Court in relation to GHG emissions were limited by the evidence before the Court on these matters.
- Any policy response to address the LEC decision will consider the regulatory impost to industry as well as the basis for the refusal.

#### **Background**

- A number of determinations relating to State significant development and infrastructure applications have been made by since the Rocky Hill decision and none of the projects have been refused on GHG or climate change grounds.
- The LEC also recently upheld the Planning Assessment Commission (PAC) decision to approve the Wallarah 2 coal mine following a judicial review challenge which alleged that the PAC had not properly considered GHG emissions and climate change impacts. In this instance, the PAC's assessment of GHG emissions was very different to the LEC's assessment in the Rocky Hill case.
- Whilst the Rocky Hill decision involved a merit review as opposed to a judicial review, the LEC decision for Wallarah 2 demonstrates that judicial review challenges are unlikely to be successful if the consent authority appropriately considers the relevant matters relating to GHG emissions. The weight given to those matters remains a matter for each consent authority to determine based on to the application before them, and not a matter likely to give rise to a legal error.
- Further, applicants involved with the Bylong and United Wambo Coal Projects (which are presently before the IPC) have been able to quickly develop and provide to the IPC GHG assessment information in response to information gaps which the Rocky Hill decision highlighted. This demonstrates that the provision of such information does not significantly delay assessment timeframes.
- In most instances mining and petroleum companies are already accounting for and reporting indirect downstream GHG emissions, therefore provision of such information should not be a significant regulatory burden.

#### **Issue 4 – Statutory and policy certainty relating to GHG assessment is needed**

NSWMC requests that the NSW Government clarifies that scope 3 emissions are not required to be accounted for and justified by a consent authority.

#### **Suggested response**

- The Government will consider NSWMC's position in the development of any policy response to the Rocky Hill decision, however, any response is unlikely to involve legislative amendments.

#### **Background**

- To address its concerns, the NSWMC may request the Mining SEPP be amended to remove the requirement to assess downstream emissions. However, this would not prevent GHG emissions being considered and may create more uncertainty as it would still be open to a consent authority to consider such matters.
- An amendment to the EP&A Act would likely also be required as the general matters for consideration set out in the Act were also the basis upon which the LEC considered GHG-related matters to be relevant to its decision.
- Amendments to either the Mining SEPP and/or the EP&A Act to stop a consent authority's consideration of scope 3 GHG emissions would likely be very controversial and generate significant criticism of the Government by environmental and community groups.



## Attachment B

### Contentious Issues Brief – Planning Policy and Assessment Timeframes

#### Summary

The NSWMC supports the Department's approach taken to improve assessment time frames and acknowledges the substantial progress made towards achieving the commitment to reduce assessment times from 1000 days to 500 days (noting current assessment times average 400 days). However, NSWMC has raised a number of concerns about regulatory processes and has proposed several measures to address these concerns.

#### NSWMC position

1. Introduce coordination powers (similar to those of the Queensland Coordinator General) to improve uniformity across assessment, approval, conditioning and post approval requirements
2. Continue to reduce assessment timeframes
3. Continue oversight of assessment performance by the Resources and Land Use Cabinet Sub Committee
4. Implement the Department's Environmental Impact Assessment Improvement Project (EIA Improvement Project)
5. Closely monitor the IPC multi-stage hearing process to determine impact on assessment timeframes

#### Issue 1 – Coordination powers

NSWMC requests the introduction of coordination powers similar to the Coordinator General role in Queensland to encourage uniformity across government in assessment, approvals, conditions and post-approval requirements.

#### Suggested response

- The Department considers that there are a range of challenges associated with this proposed shift in regulatory approach.
- Nevertheless, the Department places considerable emphasis on the effective coordination of major projects and will continue to pursue opportunities to improve regulation under the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- The Department will also continue to report on its achievements and quality assurance outcomes at the Cluster-level.

#### Background

- The Department maintains its commitment to strategic case management for key proposals, with the objective of delivering improved oversight of agency interactions and ensuring appropriate expertise is afforded to the management of these proposals.
- The Department understands that industry is supportive of these dedicated functions and will continue to pursue opportunities to improve internal processes and provide greater certainty for all stakeholders.

## Issue 2 - Assessment timeframes

NSWMC requests continuation of the Government's commitment to reduce major project assessment timeframes, including reducing duplication between the NSW and Commonwealth Governments. They also request guaranteed referral and assessment times for agencies, as well as a focus on modification applications.

### Suggested response

- The Department continues to implement processes and procedures to reduce assessment timeframes.
- Between November 2014 and March 2019, the Department was successful in reducing the average assessment time for all State significant proposals from 298 days to 145 days in government hands.
- Given the additional assessment stages required for complex mining proposals, the Department is still working to reduce end to end timeframes and has so far reduced the time in government hands from 688 to 400 days (at March 2019).
- As part of its ongoing efforts to deliver a more efficient and coordinated whole-of-government assessment processes, the Department has established an Interagency Engagement Framework with all key agencies involved in the consideration of major resource proposals.
- This framework outlines the principles underpinning agency interactions during the assessment of a State significant proposal, including expected timeframes for the provision of advice and input to conditions.
- The Department intends to extend the remit of its Interagency Engagement Framework in June 2019 to include common principles and work practices for the Department-led post approval phase.
- This extended framework will include additional guidance on the expected content and timeliness of agency input into post-approval matters and seeks to prevent unnecessary delays to the liberation of capital in the post-approval phase.
- At the same time, the Department will be seeking to embed the efficiency gains for State significant proposals and increase its focus on improving timeframes for the assessment of modification applications. At this stage, the Department is intending to establish a stretch target for 85% of modifications to be determined within 90 days (time in government hands).

### Background

- The Department's reinvigorated focus on post-approvals and modifications will provide industry with greater consistency and clarity with regard to regulatory requirements.
- The Department will continue to communicate with industry to ensure the requirements of development consents are clearly understood and post approval requirements can be readily actioned, without unreasonable delays by government agencies.

## Issue 3 – Cabinet oversight of assessment timeframes

The NSWMC requests continued high level oversight of the Department's assessment performance by the Resources and Land Use Cabinet Sub Committee to ensure assessment timeframes are continuously monitored by the Government and any issues are addressed.

### Suggested response

- The Department will continue to report on its achievements and quality assurance outcomes at the Cluster-level.
- Cluster Ministers will have close oversight of the Department's assessment performance.

#### **Issue 4 – Implementation of the EIA Improvement Project**

NSWMC requests that the Department undertake consultation on the EIA Improvement Project with a view to finalisation and implementation of the reforms in the near future.

##### **Suggested response**

- The Department is aiming to finalise the EIA Improvement Project Guidelines (which have previously been exhibited) in July/August 2019. Industry stakeholders, including NSWMC, will be consulted prior to finalisation.
- The Department will also be exhibiting additional EIA Improvement Project guidelines on cumulative impact assessment and competent EIA professionals later this year. A draft Regulation to give effect to the guidelines will also be exhibited. The Department encourages NSWMC to make a submission on the guidelines and draft regulation during the exhibition period.

#### **Issue 5 - Monitoring of the IPC multi-stage hearing process**

NSWMC requests close monitoring of the IPC multi-stage hearing process to determine if the process is unreasonably increasing assessment time frames.

##### **Suggested response**

- The Department is monitoring assessment timeframes for proposals that require a review or hearing by the IPC.
- The Department and the IPC will continue to work to identify improved practices, while maintaining the independent role, reporting and decision-making functions of the IPC.

##### **Other matters**

NSWMC requests the continuation of work on a number of policy areas to improve certainty and assist in reducing assessment timeframes. The policy areas of concern are the Bilateral Implementation Agreement, the Upper Hunter Strategic Assessment (UHSA), and Voluntary Planning Agreements (VPAs).

##### **Suggested response**

- Since July 2018, the Department has been successful in promoting improve cross-jurisdictional efficiencies through the implementation of the NSW Bilateral Implementation Agreement with the Australian Government.
- The Department maintains a strong and productive relationship with the Australian Government, facilitated by regular senior officer forums and the recently negotiated Amending Agreement to the Bilateral Implementation Agreement.
- The Department will continue to pursue opportunities to streamline regulatory processes where possible including continuing consultation with the Australian Government on the UHSA.
- The Department is continuing to support ongoing negotiations between the NSWMC and Association of Energy and Mining Related Councils in relation to VPAs.

## Attachment C

---

### Contentious Issues Brief – Independent Planning Commission

#### Summary

The NSWMC supports the Independent Planning Commission (IPC), and particularly its freedom from political interference and its focus on science, facts and evidence. However, NSWMC is concerned about a number of potential issues and states that these will require careful management to ensure that the process remains procedurally fair, determinations stand up to judicial review and that overall assessment timeframes do not increase.

#### NSWMC Position

1. The assessment and decision-making process for mining projects should be based on clear and certain policies, the best available scientific evidence and facts, and should be free from any political interference.
2. IPC should consult with key stakeholders (including NSWMC) on new policies.
3. The review into multi-stage public hearings should include consultation with key stakeholders and be broadened to include any other matters relating to the operation of the IPC.
4. IPC should apply current NSW Government policy as it stands taking into account any transitional arrangements.
5. The IPC should not conduct public meetings, or other consultation processes, for minor projects, modifications or when additional updated assessment information is received from a proponent unless there is a statutory obligation to do so.

#### Issue 1 – NSWMC seeks assurance that it will be consulted on the IPC's policy initiatives

##### Suggested response

- There is no reason to believe the Chairperson of the IPC will not consult with NSWMC on relevant future policy initiatives or policy reviews.

##### Background

- The Chairperson of the IPC met with the NSWMC shortly after her appointment in February 2018 and the IPC's recent policy initiatives were discussed at that time.
- The IPC only makes policies with respect to its procedures. The IPC does not make planning or environmental policy.

#### Issue 2 – NSWMC is concerned the IPC's use of Counsel Assisting may make processes overly legalistic

##### Suggested response

- The IPC's public hearing/meeting remains informal and there are no strictly enforced legal rules on the participants. Legal representation is not required.
- There is no restriction on the evidence that speakers may present and the IPC requires only that speakers are factually accurate and express opinions that they honestly hold.
- The IPC states that Counsel Assisting may ask questions or seek clarification from speakers. However, speakers are not cross examined.

##### Background

- Following its formation on 1 March 2018, the IPC implemented new policies for the conduct of its public hearings, public meetings and multi-stage public hearings.
- The IPC's stated purpose for using Counsel Assisting is to assist the IPC in the conduct of a public hearing/meeting.

Issue 3 – NSWMC is concerned about the IPC's approach to transitional arrangements in any new Government policy

**Suggested response**

- There is no evidence available to the Department that the IPC has incorrectly applied Government policy.

**Background**

- The NSWMC concern likely arises from the IPC's recommendations in its review of the United Wambo Coal Mine Project in March 2018.
- The recommendations were widely misunderstood to mean that the newer *Noise Policy for Industry* should be applied to the project in full, and not its transitional arrangements.
- The IPC stated only that, "*The applicant and the Department should consider the opportunity [emphasis added] to adopt the [Noise Policy for Industry] ... as this would allow for the project to be assessed and considered under guidelines that represent best practice.*"

Issue 4 – NSWMC is concerned the IPC's multi-stage public hearings will extend assessment time frames.

**Suggested response**

- The multi-stage process is new and it is too soon to objectively evaluate its effects on decision making timeframes.

**Background**

- The multi-stage process was designed so that the IPC could evaluate a project shortly after the initial public exhibition period, rather than later in the process.
- The aim is to avoid significant issues being raised by the IPC late in the process, thereby reducing the risk of extending decision time frames.
- The Vickery Coal Extension Project is the only project to date to undergo a multistage hearing.
- This project was referred to the IPC on 15 October 2018. The public exhibition period concluded on 25 October 2018. The first stage hearing was conducted 4 February 2019 (and would likely have been sooner, but for the Christmas period), and the IPC delivered its first stage report on 30 April 2019. The matter is now with the Department for assessment.

Issue 5 – NSWMC states the IPC should not conduct a public meeting for minor projects or modifications

**Suggested response**

- The IPC reserves its discretion to hold a public meeting on any matter and for any reason.

**Background**

- The IPC usually holds a public meeting when there are more than 25 public objections.
- The Commission is unlikely to hold a public meeting when there are fewer than 25 public objections and if the Department's assessment report has addressed the issues raised in public submissions.

## Attachment D

---

### Contentious Issues Brief – Rehabilitation and Mine Closure

#### Summary

The NSWMC states that the NSW mining sector has a strong record on mine rehabilitation but is concerned that it is exposed to unwarranted regulatory risk due to ongoing government reforms and inefficiencies.

#### NSWMC position

1. Industry is committed to delivering high quality, progressive rehabilitation of mining operations.
2. Government policy should not mandate the backfilling of final voids. Final voids can provide a variety of environmental, economic and socially beneficial post-mining land uses.
3. Industry is seeking the establishment of a clear rehabilitation certification and relinquishment pathway to provide certainty that completed rehabilitation can be relinquished.
4. A whole of Government approach should be developed with regard to mine rehabilitation regulation. This approach should consist of the existing suite of comprehensive regulatory tools and be led by a single department to remove the current competition amongst regulators.
5. The NSW Government should continue to work proactively with industry to promote rehabilitation best practice and support research into improved rehabilitation outcomes.
6. The NSW Government should consult with industry and prepare detailed Regulatory Impact Statements for any proposals resulting from current regulatory reforms underway within the Department of Planning and the Resources Regulator.

#### Issue 1 – Industry is committed to delivering high quality mine rehabilitation

NSWMC states that the industry actively works with the community, regulators and research bodies to ensure rehabilitation practices consistently meet high standards.

#### Suggested response

- The Government acknowledges the efforts of the industry and that there are many examples of good quality mine rehabilitation in NSW.
- Ensuring good quality and timely rehabilitation is fundamental to building social licence for the mining industry.
- The Government will continue to work with industry to ensure mine rehabilitation and its regulation meets community expectations.

#### Issue 2 – Backfilling of final voids

NSWMC requests that the Government not mandate the backfilling of final voids as this may not be viable for some mine sites and there are also beneficial reuse opportunities for voids.

#### Suggested response

- The Government has explicitly acknowledged that final voids need to be considered on a case by case basis.
- The proposal to develop a policy framework to inform the assessment of final voids (as detailed in the 2017 *Improving Mine Rehabilitation Discussion Paper*) sought to identify how a consent authority would go about determining the acceptability of a final void in a post-mining landform. It did not seek to ban final voids.
- Proposals which include final voids will continue to be assessed on a case by case basis.

### Issue 3 – More clarity for rehabilitation certification and relinquishment

NSWMC is concerned that the Resource Regulator's Operational Rehabilitation Reforms missed an opportunity to provide a clear certification and relinquishment pathway. NSWMC is also seeking the development of a progressive rehabilitation certification process.

#### Suggested response

- The Government understands the importance of providing a clear and transparent relinquishment process for rehabilitated land.
- The Government encourages the NSWMC to continue its conversations regarding the relinquishment of the mining lease with the Resources Regulator.

### Issue 4 – A whole of Government approach to mine rehabilitation regulation

NSWMC is concerned that reforms to the mine rehabilitation regulatory framework have been led by different agencies leading to regulatory overlap and competition and requests a whole of Government approach be developed.

#### Suggested response

- The Government acknowledges NSWMC's concerns about the duplication of regulatory functions, particularly with regards to management plan and reporting requirements.
- Mine rehabilitation is regulated under both the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the *Mining Act 1992* (the Mining Act).
- Regulation and policy development under these Acts have been undertaken wholly within the Department since the former Division of Resources and Energy and Resource Regulator were moved into the Department of Planning and Environment. As such, there are no reforms that are being led by different departments.
- The duplication is not a result of reform, rather it is the result of overlapping obligations on the development consent under the EP&A Act and the mining lease under the Mining Act.
- Close consultation has occurred between groups working on the different reform proposals under the EP&A Act and the Mining Act to ensure issues of duplication of obligations are being addressed. Further work is required in this space.

### Issue 5 – NSW Government to continue to work with industry to promote best practice

NSWMC requests that the Government continue to work proactively with industry to promote rehabilitation best practice and support research that will assist into the delivery of optimal rehabilitation outcomes.

#### Suggested response

- The Government strongly supports ongoing collaboration and is actively interested in exploring the potential for rehabilitated mines to positively contribute to future regional economies.
- The Government is open to suggestions as to how this collaboration could be further improved.

## Issue 6 – Reform of rehabilitation regulation and policy

NSWMC states that the regulation of mine rehabilitation has been the subject of significant reform over the past term of Government and specifically identifies: the 2017 NSW Audit Office review of mine security deposits; the 2017 NSW Government Discussion Paper *Improving Mine Rehabilitation in NSW*; and the Resource Regulator's Operational Rehabilitation Reforms and review of their Rehabilitation Cost Estimate (RCE) calculation tool. NSWMC has requested Regulatory Impact Statements for any proposals resulting from any current regulatory reforms underway within the Department.

### Suggested response

- The 2017 NSW Auditor-General's *Report on Mining Rehabilitation Security Deposits* was not a reform but rather a performance audit to assess whether the former Department of Industry, Skills and Regional Development (Department of Industry) maintained adequate security deposits to cover the liabilities associated with mine closures, including mine rehabilitation.
- The performance audit identified significant failings in the regulation of mine rehabilitation including a finding that the deposits held by the Department of Industry were not likely to be sufficient to cover the full costs of each mine's rehabilitation in the event of a default.
- This performance audit and report were the catalysts for the update to the RCE tool in 2018 and the Resource Regulator's Operational Rehabilitation Reforms which are primarily administrative changes to processes under the Mining Act and have yet to commence.
- The 2017 NSW Government *Improving Mine Rehabilitation in NSW Discussion Paper* presented a Departmental view (i.e. including the view of the former Division of Resources and Energy) on what potential improvements could be made to the rehabilitation regulatory framework. No reforms have been implemented from that work to date.
- The Discussion Paper was developed by both Planning and Resources regulators and was in response to issues raised by the former Planning Assessment Commission as well as the failings identified in the Auditor General's Report.
- The Department will consult with the industry on any proposals arising from the exhibition of the Discussion Paper.
- The Department will undertake Regulatory Impact Statements for any reform proposal as required by NSW Government policy.

### Background

- The Department (including the former Division of Resources and Energy) undertook a review of the mine rehabilitation regulatory framework in 2016 and 2017.
- A Discussion Paper outlining potential improvements to the regulatory framework was publicly exhibited from 30 November 2017 to 16 February 2018. Stakeholder input on the Discussion Paper was used to inform the development of a draft Policy Framework and Action Plan which were finalised in September 2018.
- This work was undertaken by a group comprising representatives from Planning Services, Policy & Strategy, the Resources Regulator and the Division of Resources and Geoscience.
- The proposed approach is currently being reconsidered by the Department and a revised Policy Framework will likely be put forward for Ministerial consideration later this year.