

**Submission
No 28**

INQUIRY INTO BENEFICIAL AND PRODUCTIVE POST- MINING LAND USE

Organisation: Broula King Enterprises Pty Ltd

Date Received: 25 June 2024



25 June 2024

Submission to the Standing Committee Inquiry into beneficial and productive post-mining land use inquiry

Thank you for the opportunity to contribute to the *Beneficial and productive post-mining land use inquiry* established on 14 May 2024 by the Standing Committee on State Development.

This submission is prepared by Broula King Enterprises (**BKE**), a company committed to productive post-mining land use in NSW. BKE have acquired Broula King Joint Venture Pty Ltd (**BKJV**) who hold the exploration and mining licence for the Broula King Mine (EL 8509 and ML1617), approximately 10km from Cowra, along with the exploration licence and newly granted mining license at Sunny Corner (EL 5964) and ML1878). Sunny Corner legacy Mine is considered to be in the top 7 worst polluting historical mine sites in NSW, located on the outskirts of the Sunny Corner village, 37kms from Bathurst.

Summary

Our submission aims to highlight the regulatory challenges faced at Broula King Mine, which has been in "care and maintenance" since 2014 due to the depletion of identifiable mineable resources and multiple compliance orders.

At BKE, we are dedicated to fostering a cleaner, greener world through the remediation of abandoned mines and recycling waste materials to support a sustainable future. Unfortunately, we have encountered significant regulatory obstacles and threats that impede our progress towards these goals in NSW.

We believe the actions taken by regulatory authorities' conflict with the objectives of this inquiry, which seeks to explore and encourage productive land uses after mining operations cease.

Through this submission, we wish to share our experiences and challenges to highlight the disconnect between the future goals of the NSW Government and the current actions of the Environmental Protection Authority (**EPA**), the NSW Resource Regulator (**Regulator**), and the Mining, Exploration and Geoscience Department of Regional NSW (**MEG**). We hope that the findings of this inquiry will help resolve these inconsistencies, so that tangible environmental improvements can be achieved at legacy mines in NSW.

This letter broadly deals with the Inquiry's Terms of Reference, with **Attachment 1** specifically commenting on each term.

Given current financial constraints, which are detailed below, we are unable to provide a comprehensive, detailed submission. Instead, we present a background of our situation and a summary of our key issues and submissions, along with relevant correspondence and documents that outline our interactions with regulatory authorities.



Background

BKE is an entity seeking to utilise modern extraction technologies, makes acquisitions based on the ability to reclaim, recycle and rehabilitate derelict mining sites. By using innovative techniques, the heavy metal contaminants within old mines (such as the Broula King Mine and Sunny Corner Mine) and their sources are treated, and the residual metal contained within extracted.

BKE's ownership includes BKJV and Mining Lease ML 1617, which encompasses the Broula King Gold Mine near Cowra, NSW.

By way of further background in 2019, BKE acquired the Sunny Corner Mine, a severely contaminated site located between Lithgow and Bathurst. Listed among the top seven most hazardous legacy mines in NSW by a 2017 Federal Senate Committee report, Sunny Corner suffers from extensive Acid Mine Drainage. Since the site was abandoned before the enactment of the *NSW Mining Act* in 1992, its rehabilitation has traditionally been a taxpayer burden managed under the NSW Legacy Mines program, which focuses more on containment than on full restoration.

BKE proposed a novel approach to the Sunny Corner challenge: using advanced processing technologies to extract valuable metals—gold, silver, copper, zinc, and lead—from the slag heaps causing the Acid Mine Drainage. This strategy not only aimed to generate revenue by adding critical metals to the supply chain but also to fund the comprehensive remediation of the site, along with the advantage of being centrally located to numerous other legacy and abandoned sites in NSW - "Eastern Lachlan Orogen".

To move forward with Sunny Corner's remediation, BKE required Development Approval from Bathurst Council and needed a suitable processing facility. In 2020, BKE identified the Broula King Mine Plant on ML 1617 as a potential processing site. This facility, although in "care and maintenance," offered a strategic location between Cowra and Grenfell.

BKE's due diligence of the Broula King mine site 2020, subject to ML 1617, revealed that whilst the site was attractive, it was not viable due to the large expenditure requirement to bring the site into an approved viable operating position.

It was only after being provided certain undertakings from senior officers of MEG that we agreed to pursue the site. These assurances indicated that any existing obligations would remain with the previous entity RBX Resources (**RBX**). We were explicitly informed that outstanding issues with the site should not deter Sunshine Reclamation (previous corporate entity that is now BKE) from proceeding with the acquisition. This guidance was pivotal in our decision to move forward with the purchase. A report on the discussions held with the Regulator and events leading up to the decision to purchase BKJV is attached at **Tab 2** of the submission.

Without these undertakings, BKJV would not have been acquired, and the site would have likely remained in its state of care and maintenance, potentially leading to administration. This would have compounded the Department's challenges with derelict mine sites.

Since BKE's acquisition in 2020, the site has been propelled into controversy through a commercially motivated campaign run by some of the surrounding landowners, whose land is subject to ML 1617, to seek to influence property values and possible compensation claims. Their unsubstantiated views were given a platform at the recent NSW Legislative Council's *Inquiry into the impacts of gold, silver, lead and zinc mining on human health, land, air, and water quality*. Regrettably, their claims were not properly scrutinised nor fully substantiated.

The recent developments appear to stem from the reluctance of MEG and the Regulator to adapt their regulatory approach to the unique circumstances surrounding our remediation and rehabilitation efforts. This inflexibility seems to be a reaction to prior criticisms that these departments had allowed inadequate site management and procedural lapses. Consequently, instead of addressing our specific needs and the challenges we face, their rigid stance hampers our progress in commencing necessary remediation and rehabilitation activities.

Section 240 Notice and EPA requests

On 1 November 2021, the Regulator issued a Section 240 notice (NTCE0009088) to BKE, mandating specific remediation works on the Tailings Storage Facility (TSF) wall at Broula King Mine to be completed by 29 April 2022. The directive required BKE to reprofile the TSF wall, install a cover system to encapsulate Potential Acid Forming (PAF) materials, and construct a long-term stable landform over the TSF wall. A copy of this notice is attached at **Tab 3** to this submission.

Subsequently, on 16 November 2021, BKE received correspondence from the EPA. This correspondence highlighted the need for BKE to develop a comprehensive plan to manage the additional disturbances associated with the Section 240 directive. The EPA's letter included a draft notice to vary our existing Environmental Protection Licence to align with the necessary remedial works on the TSF. A copy of this letter is attached at **Tab 4**.

During the preparation of the Surface Water Management Plan, which was required to comply with the variation to our Environmental Protection Licence, it became evident that additional measures were needed to carry out the Section 240 works and to comply with Section 120 of the *Protection of the Environment Operations Act 1997*. Specifically, we identified the need to construct a retaining bund (SB12) to ensure proper sediment control and surface water management. This bund was essential to prevent potential environmental impacts during the execution of the TSF works.

On 26 May 2022, BKE formally requested an extension to the compliance date for the Section 240 notice, citing various extenuating circumstances. This request, detailed in a letter to the Regulator, outlined the significant challenges faced in adhering to the initial deadline. A copy of this letter is attached at **Tab 5**.

On 12 July 2022, the Regulator granted an extension to the original compliance date. A revised notice, NTCE0010434, was issued as a variation to NTCE0009088, extending the deadline for the TSF wall works to 28 December 2022. A copy of this notice is attached at **Tab 6** to this submission.

On 14 September 2022, BKE wrote to the Regulator requesting another extension of time to the compliance date. This request was necessitated by ongoing challenges and delays in securing the required approvals. A copy of this letter is attached at **Tab 7** to this submission.

On 21 December 2022, the Regulator granted an extension to the compliance date. A revised notice, NTCE0011470 was issued as a variation to NTCE0010434, requiring BKJV to complete works by 31 December 2023. A copy of this notice is attached at **Tab 8** to this submission.

As the new deadline approached, BKE sought additional extensions via letters sent on 5 and 18 December 2023. Initially, these requests were declined. In response, our legal representatives, Colin Biggers & Paisley (**CBP**), wrote to the Regulator on 22 December 2023, and again on 23 January 2024 with supporting documentation. These letters presented detailed reasons and extenuating circumstances justifying the need for further extensions. The letter dated 22 December 2023 is attached at **Tab 9** and the letter dated 23 January 2024 is at **Tab 10**. The primary grounds for these requests included:

BKE Does not have development consent to lawfully carry out the works

Development consent for the planned works associated with the TSF is required.

Despite BKE's persistent efforts, significant delays have occurred, preventing the timely granting of this necessary approval.

These delays are comprehensively documented in the attachments but them from the Planning Portal not allowing lodgement of a modification without owners consent. Yet owners consent is not required under the mining legislation.

Delays in sourcing clay material

Applying a clay seal is necessary for works on the TSF wall to prevent acidic waters from those rocks flowing into the downstream environment.

Despite the Regulator forming the view that "*the current proposal to source clay material from on-site should have been progressed far sooner*", BKE has taken reasonable steps to source suitable clay immediately from the date the notice was issued, and other clay sources have been frustrated by litigation.

These delays are documented thoroughly throughout the attachments.

On 27 February 2024, the Regulator wrote to CBP and stated it had deemed BKJV had failed to comply with Direction 1 in Notice NTCE0011470 by 31 December 2023. A copy of this letter is attached at **Tab 11** to this submission.

On 29 February 2024, the Regulator issued BKJV with an investigations notice. A copy of this investigation notice is attached at **Tab 12**.

As the above demonstrates, an extraordinary amount of time, money and energy has been applied dealing with regulatory issues, rather than directing these resources into tangible environmental improvements to the site.

Challenges with Regulatory Compliance and Action

The completion of the required Direction 1 works is contingent upon obtaining the necessary development consent. Despite BKE's reasonable efforts and best endeavours to comply with the Direction 1 works, progress has been hindered by factors beyond our control.

Both the letter from Colin Biggers & Paisley (dated 22 December 2023) and our letter to MEG (dated 19 March 2024), detailed below, explain the undertaking that was provided by senior officers of MEG and the Regulator, which we have placed significant reliance on.

There is unanimous agreement on the need for rectifying the Tailings Storage Facility (TSF) wall. The unresolved issue, however, is how to streamline the regulatory processes that impact the timing and execution of these rectifications.

BKE would be more inclined to accept the Regulator's decision to deny an extension if there were an immediate risk of environmental harm. However, the issue requiring the completion of Direction 1 works has been

present since November 2013, indicating no urgent environmental threat that necessitates immediate action.

BKE is also of the view that there will be a superior environmental outcome if the variation it proposes is approved due to the need for among other things a smaller volume of clay material to carry out the works rather than larger volumes sourced kilometres away from the site.

Outstanding Security Deposit

The previous owners of the Broula King Mine, RBX, had outstanding section 240 notices prior to BKE taking over on 18 December 2020. These notices, assessments and subsequent fines were a consequences of RBX not submitting a renewed Mine Operations Plan (**MOP**). Part of the MOP required an assessment under section 261BC of the *Mining Act 1992* to determine the security deposit required for ML 1617. RBX had not provided a Rehabilitation Cost Estimate (RCE) to the Regulator since 19 July 2026.

On 16 April 2021, an assessment was conducted under Section 261BC of the *Mining Act 1992* to determine the security deposit required for ML 1617. The assessment concluded that the required deposit was \$1,982,000, which is an additional \$1,470,000 on top of the existing security deposit held by the Department of Regional NSW. A copy of this assessment is attached at **Tab 13** to this submission.

On 10 June 2021, Sunshine Reclamation sent a letter to MEG seeking a resolution to the regulatory delays at the Broula King site. A copy of this letter, along with its appendix, is included in this submission at Tab 14.

Between receipt of the security deposit assessment on 16 April 2021 and December 2022, BKE made several requests for variations and stays regarding the Security Bond. On 30 May 2023, we formally requested a review of the increased security deposit to account for the costs associated with the required remediation work as specified in the Section 240 notice. This request aimed to align the deposit with the anticipated expenses for fulfilling the remediation obligations. A copy of the email attaching this request, along with the enclosed letters, is attached at **Tab 15** to this submission.

On 14 December 2023, MEG reviewed our proposal and decided that the security deposit amount would remain unchanged. However, they granted an extension of time to pay the deposit until 31 January 2024 to facilitate the completion of the required works. A copy of this letter is attached at **Tab 16** to this submission.

On 23 January 2024, BKE submitted a separate letter requesting an additional extension. This letter, which outlines our request for more time to secure the necessary funds for the deposit, is included in **Tab 17** of this submission.

On 14 March 2024, MEG determined that no further extension would be granted, and that the security deposit was now overdue and required immediate payment. A copy of this letter is attached at **Tab 18** to this submission.

On 19 March 2024, BKE responded to MEG's decision, expressing our concerns and reiterating our position on the need for more time to manage the deposit requirement effectively. This letter is attached at **Tab 19** to this submission.

On 25 March 2024, BKE reached out to relevant Ministers, requesting a whole of government approach to address the regulatory challenges faced by the Broula King Mine. We hoped that a coordinated response might lead to a more practical and supportive resolution, rather than perversely lead to time and money



being spent dealing with the regulatory issues. A copy of this letter is attached at **Tab 20** to this submission.

Submission

The vision of BKE is to go beyond mere extraction, encompassing significant benefits for regional communities and the government that include positive benefits for local communities and the economy, business, industry, and the broader state including:

Reducing the financial burden on taxpayers for the cleanup of derelict mine sites.

Creating a stream of royalties for the state government.

Restoring numerous abandoned mines to a safe and productive state.

Generating jobs in regional areas and supporting local businesses.

Supplying essential materials for a sustainable future through a circular economy.

These initiatives highlight the potential for multiple successive land uses that can provide economic, social, and environmental benefits.

Innovative investment in the segment of the mining industry such as ours depends on trust and reliability in Government. BKE's efforts to address legacy issues and develop post-mining sites hinge on this trust, as sudden policy shifts or cultural change within agencies can undermine long-term planning and investments aimed at supporting the transition to a decarbonised economy.

BKE's innovative techniques have encouraged the development of academia and studies in this form of productive post-mining land use. BKE have existing Research Programs with Deacon and Newcastle Universities developing modern Critical Minerals & REE reclamation technologies and other commercial uses for mine waste. Our initiatives create jobs and support local businesses in regional areas, contributing to workforce development and the broader economy.

The profits from the sale of the recycled metals contribute to reclamation and rehabilitation purposes at sites like Broula, as well as providing a return on the capital invested by investors. It is commercially unviable to front end reclamation and rehabilitation unless the requirements for approval and commencement of extraction activities are appropriately staged to correspond with a return on the recycled minerals.

The NSW system's fragmentation and the officious application of NSW laws now creates a sovereign risk to future investment in this work, as investors lose confidence in the project due to time delays and regulatory hurdles.

BKE seeks to work through this issue in a reasonable way. We are seeking to deliver an outcome that delivers an onsite environmental outcome that resolves all the onsite environmental hazards arising from the legacy issues associated with the site, for which the Crown is liable, rather than myopically focusing on one onsite environmental hazard (the TSF wall), which has been successfully controlled and mitigated by the License Holder for the last 3 years in one of the wettest recorded periods for the area. Insisting on the payment of the security immediately will perversely impact our ability to attain the above objective.

It is a significant impost to pay (security for the full cost of these works whilst simultaneously carrying out those works), and this requirement resiles from the undertaking given before purchasing the company and taking



control of the site was that these costs could be staged. The sensible undertaking provided by those officers is regrettably now being ignored.

The exercise of appropriate regulatory discretion is essential for advancing beneficial and productive post-mining land uses, but if that discretion is not to be used then reform needs to occur. We advocate for a regulatory framework that better enables companies like BKE to take proactive steps in environmental remediation and site development.

The current regulatory system has created sovereign risk in investment for the rehabilitation and reclamation of old mines. Whilst it is uncontroversially agreed that many of these sites will require significant rectification, what remains unresolved is the process to remove regulatory demands and impediments which affect the time, cost, and manner by which post-mining land uses can occur. A rigid enforcement approach will stymie investment into the company and the site, resulting in further delays or an undesired close down, and divert further resources into defending the company's position legally, rather than provide an environmentally positive solution to the site.

The current legal and regulatory battles are deferring remediation work. There is an existing mining treatment plant which can be recommissioned to provide a small-scale commercial operation which will enable outstanding regulatory and remediation issues to be completed to the satisfaction of all parties. This would provide a practical pathway to initiate productive post-mining land uses while addressing legacy environmental concerns.

Despite these challenges, BKE remains committed to continuing its collaboration with the Regulator and the EPA to advance our core activities and achieve our shared goals for the environment and community.

Yours faithfully

Daryl Young – Director
Broula King Enterprises Pty Ltd

Attachments to Submission

Tab	Document	Date
1.	Submission to the Terms of Reference of the Inquiry	[date of submission]
2.	True reflection of events between SRP and Investor Richard Grainger and MEG and the Regulator (signed by Daryl Young, BKE director, Merril Gray, former director, and Richard Grainger, investor)	16 December 2020
3.	Section 240 Notice NTCE00110434	1 November 2021
4.	Letter from EPA to BKJV	16 November 2021
5.	Letter from BKE to Regulator requesting extension	26 May 2022
6.	Section 240 Notice NTCE0011470	12 July 2022
7.	Letter from BKE to NSW Regulator requesting further extension	14 September 2022
8.	Section 240 Notice NTCE0010434	21 December 2022
9.	Letter from CBP to Regulator requesting variation/extension	22 December 2023
10.	Letter from CBP to Regulator responding to information request	23 January 2024
11.	Letter from Regulator to CBP rejecting extension request	27 February 2024
12.	Investigation Notice from Regulator	29 February 2024
13.	Assessed Security Deposit Requirement	16 April 2021
14.	Letter from Sunshine Reclamation to ME seeking resolution to regulatory delays (appendix at 14(a))	10 June 2021
15.	Email from BKE to MEG requesting review of security deposit (enclosed letters at 15(a) and 15(b))	30 May 2023
16.	Letter from MEG Granting extension for security deposit payment	14 December 2023
17.	Letter from BKE requesting further extension for security deposit payment	23 January 2024
18.	Letter from MEG denying further extension for security deposit	14 March 2024
19.	Letter from BKE to MEG addressing security deposit concerns	19 March 2024
20.	Letter from BKE to Government Ministers seeking support regarding regulatory issues	25 March 2024