



15 August 2023

Dan Endacott
Acting Executive Director Resource and Environmental Compliance
Resource and Environmental Compliance Division
Department of Mines, Industry Regulation & Safety
100 Plain Street
East Perth WA 6004

Sent via email: REC.Consultation@dmirs.wa.gov.au

Dear Dan,

RE: MINING DEVELOPMENT AND CLOSURE PROPOSALS (MDCP) AND APPROVALS STATEMENTS DISCUSSION PAPER

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia. CME is funded by member companies responsible for 87 per cent of the State's mineral and energy workforce employment,¹ ranging from mining (mineral and petroleum commodities) to manufacturing (alumina, basic inorganic chemicals, and explosives) and supporting services.

CME members are major users of the *Mining Act 1978 (WA)* (Mining Act), *Mining Regulations 1981* and associated guidance documents. As a result, the efficient operation of the WA mining regulatory framework is of great importance to our membership and the ongoing international competitiveness of the WA resources sector.

The concept of the Mining Development and Closure Proposals (MDCP) and Approvals Statements were first conceived in the development of the Mining Amendment Act 2022, previously known as the Streamlining (Mining Amendment) Bill 2021. In our submission to the then draft Bill, CME highlighted the duplication risks inherent in creation of additional processes, reiterating the overarching priority of the sector to see more efficient and simplified processes.

We acknowledge that the release of the MDCPO and Approvals Statements Discussion Paper (Discussion Paper) represents concerted effort by the Department of Mines, Industry Regulation and Safety (DMIRS) to identify and consult on practical ways to reduce administrative burden.

CME is supportive of proposals within the Discussion Paper to remove the detailed activity table and introduce a description of proposed mining operations. These changes are practical and have the potential to reduce administrative obligations without compromising outcomes.

CME also considers that the consolidation of approval conditions and obligations in an Approvals Statement provides an opportunity to streamline compliance management processes for both the DMIRS and industry.

However, we note the actual benefit will depend on the implementation process which has not been outlined in the Discussion Paper.

CME supports Discussion Paper proposals to remove the detailed activity table, introduce a description of proposed mining operations, and consolidate approval conditions and obligations within the Approvals Statement and recommends these are implemented.

While the above specific proposed changes as supported, CME considers the broader MDCP and Approvals Statement processes as currently outlined in the Discussion Paper require additional clarity and fall short of setting out a framework that will lead to streamlining of the mine development or closure planning processes.

¹ Government of Western Australia, [2021-22 Economic Indicators Resources Data](#), onsite employment under State legislation, Department of Mines, Industry Regulation and Safety, 5 October 2022.

CME members are concerned the framework proposed in the discussion paper, as a whole, would create the risk of increased duplication and are administratively burdensome processes particularly with regards to mine closure. **CME recommends that DMIRS reconsider the proposed framework to ensure duplication is not being introduced and identify opportunities to implement a process that provides efficiency benefits for both the regulator and the proponent.**

CME recommends the DMIRS focus on the following three aspects of the proposed MDCP and Approvals Statement framework, since these directly impact the efficiency of the new framework:

1. Clarify the interaction between the MDCP and the Mine Closure Plan (MCP).

It is unclear from the Discussion Paper how the MDCP and MCP processes interact. Since the MCP requirement will remain, inclusion of specific closure information in the MDCP in addition to that required in an MCP appears duplicative and could lead to inconsistent outcomes. If proponents with an existing MCP are exempt from the requirement to develop an MDCP for the same project to prevent duplication, then this should be clearly articulated.

2. Review new processes and terminology to ensure clarity and consistency between (and within) permitting processes.

Inconsistent use of terminology and the introduction of new overarching processes such as standardised risk assessment frameworks, that have not been socialised with industry prior to inclusion in the discussion paper creates uncertainty. By extension, there is a need for improved clarity of definitions and process to enable industry to assess impact and intent.

3. Address missed opportunities for cross departmental streamlining.

Duplication between *Mining Act 1978* approvals processes and approval processes under Part IV and Part V of the *Environmental Protection Act 1986* should be addressed where possible. The development of the MDCP and Approvals Statement framework provides a good opportunity for DMIRS to critically assess and collaborate with the Department of Water and Environmental Regulation to identify information and procedures that can be removed from current assessment processes and streamlined to avoid duplication. These issues have previously been outlined in our submission to the then Streamlining (Mining Amendment) Bill 2021.

Detailed comments on the framework are provided in Appendix 1.

It is critical that consultation on the proposed framework includes information on proposed transition processes and implementation timing. It is important for industry to understand how DMIRS will transition to a new approach, and that there is capacity (resources with appropriate expertise) within the Department to implement the transition, since industry will continue to implement obligations associated with approved operations and will require timely processing of applications (for both existing and new operations) throughout the transition. **CME recommends that prior to the finalisation of the framework DMIRS conducts consultation on the transition process with industry stakeholders and assesses the resource requirements related to implementation.**

CME welcomes the Department's efforts to address duplication and inefficient processes. We encourage the Department to continue to focus on practical measures by undertaking a detailed analysis of existing administrative processes that can be streamlined, noting that administrative improvements are a low-cost way of delivering benefits to proponents and reducing pressure on departmental resources. Based on member feedback, measures to reduce multiple 'Requests for Information' would deliver a significant and immediate benefit.

CME also encourages DMIRS to prioritise the utilisation of funding provided through the State's 2023/24 budget to progress modernisation of Information and Communications Technology (ICT) systems as soon as possible, in close consultation with industry. This should include systems that may be utilised for the lodgement of MDCPs and facilitate updating of Approval Statements, with features that allow for real time updating as an application is processed. To ensure Western Australia retains its hard-earned status as a world leading mining jurisdiction, ongoing investment in modernising all aspects of regulation, including technology, will be critical. CME considers this is an example of a no regrets investment which stands to deliver benefit for government and industry.

CME remains committed to collaborating with DMIRS to progress the development and implementation of the MDCP and Approvals Statement framework and appreciates the engagement with the Department to date. We would welcome the opportunity to host further discussions during the development of the guidance.

Should you have questions regarding this submission, please contact Anita Logiudice, Acting Manager Resource Development and Sustainability, via email at a.logiudice@cmewa.com.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca Tomkinson', with a large initial 'R' and a decorative flourish at the end.

Rebecca Tomkinson

Chief Executive Officer



Appendix 1 – Discussion Paper MDCP and Approvals Statement

Guideline Section

CME Comments – MDCP and Approvals Statement

1. Introduction

CME considers provision of guidance regarding the proposed transition arrangements for existing Mining Proposals (MP) and MCP's as well as expected timing of implementation of the MDCP framework would be useful to provide certainty of process to industry. This will help to ensure proponents looking to meet current obligations and progress future development applications have a clear understanding of pending changes and how that may impact and influence their approach.

Specifically, the new framework and associated guidelines need to consider how to transition:

- Larger and more complex projects which have been operating for a long period of time.
- Consideration of legacy issues within projects.
- Projects approved under multiple MP frameworks (i.e., 2006 & 2020) and in some cases even older MPs in existence.
- Projects who wish/need to transition, but also require new/additional approvals to not impede mine development.
 - o Many projects have not moved to a single MP.
- Avoid re-assessment of already approved activities.
- Avoid duplication of MCP content and reporting requirements (contained in Mine Closure Completion Guideline).

CME recommends the guidance provides detail on the proposed transition arrangements and that industry consultation is undertaken prior to implementation to ensure that approach is informed by industry to allow proponents to continue to operate and be compliant. This may be achieved through the formation of an industry reference group to provide input as the guidelines are being prepared to trial and test the guideline applicability to a variety of mine sites including sites with different timelines (e.g., Greenfields, mature ops and in rehab/ closure phases) and with different layers/ combinations of regulatory instruments (e.g., Part IV, Part V of Environmental Protection Act 1986 & Environment Protection and Biodiversity Conservation Act 1999).

The potential for inconsistent approaches to transitioning existing operations to the new framework is high (based on member experience of the 2020 Guidelines role out), particularly for re-assessment of an already approved activity. **CME recommends DMIRS prioritise the development of clear internal assessment guidelines and tools prior to implementation of the new framework to avoid re-assessment of approved activities and ensure consistent application and approach.**

Guideline Section	CME Comments – MDCP and Approvals Statement
1.1 Efficiencies and reduction in duplication	<p>CME remains fully supportive of the intent to deliver streamlining benefits through this framework. CME recommends ongoing engagement and co-design on future streamlining opportunities to ensure industry can provide input and understand DMIRS vision for the future.</p> <p>Beyond the three matters identified in our letter, CME has not been able to identify how the MDCP will result in any significant streamlining of process for proponents from the discussion paper. The discussion paper lacks sufficient detail regarding how these processes will practically operate to remove duplication and enable industry to clearly see any real efficiency or streamlining benefit. CME recommends that DMIRS demonstrates how this reform removes duplication and delivers efficiency benefits to industry with respect to MP's and MCP's.</p> <p>CME considers further information, and a clear distinction is provided regarding the closure undertakings the MDCP seeks to incorporate and those required in an MCP. The process for mine closure is necessarily iterative (especially with projects that have long mine life) whereas, at the specific point in time when an MDCP would be submitted many closure related matters are not yet fully formed. This temporal mismatch requires specific recognition and accommodation within the framework.</p> <p>CME is supportive of an Approvals Statement that provides standardised conditions and clear compliance obligations as proposed in the Discussion Paper. However, clarity on transition to the Approvals Statement is needed, including the process that will be used to update the MDCP and Approvals Statement given the MCP will still be required to be updated at set timeframes. It is not clear how, or if the MCP will impact conditions in the Approvals Statement, noting the iterative closure process could result in shifting conditioning or deviation from the original closure outcomes indicated in the MDCP. This appears duplicative and poses a compliance risk if the MCP deviates from the Approvals Statement and original MDCP.</p> <p>For the purposes of streamlining and efficiencies it is important that the MDCP and Approvals Statement can be lodged, updated, and accessed via an easy-to-use ICT system ensuring that it is user friendly and functional to minimise any burden in administrative processes. CME recommends that DMIRS engage with industry to develop streamlined ICT processes and allow industry to provide early system feedback and undertake user acceptance testing.</p>
2. Mining Development and Closure Plan	<p>CME considers, with the proposed removal of some sections in the combined document, the high-level proposed inclusions noted in the Discussion Paper could simplify the process for undertaking an MDCP. However, the document, when considered in detail, still appears to require a high level of information related to closure, much of which is likely to be subject to revisions over time and included in MCP iterations. CME recommends that the MDCP should, with regards to closure, confirm a proponent's intent to meet high level principled undertakings and indicate overall approach to engagement with stakeholders.</p> <p>CME recommends that DMIRS clearly outline the scope proposed for an MDCP with regards to closure and ensure that this does not duplicate or complicate processes with the MCP and acknowledges the iterative nature of mine closure.</p>
2.1.1 Description of proposed mining operations	<p>The removal of the requirement to include a detailed activity table is welcomed. However, this section currently includes inconsistent terminology between activity envelope and disturbance envelopes. These have different practical definitions and will have a very different outcome in application. CME recommends that DMIRS clarify terminology and ensure consistent wording is utilised.</p>

Guideline Section	CME Comments – MDCP and Approvals Statement
2.1.2 Legislative framework	<p>The description in this section indicates that DMIRS will not be assessing all activities, however at the end of the section it indicates that further contextual information will be required e.g., indicative site plan. This wording has the potential to lead to inconsistency in application and assessment. Further if this was to be maintained in finalised documentation it will not represent a reduction in administrative burden and would instead represent a reincarnation of an activity table with a different title. CME recommends that DMIRS clarify the information required for this section, with a view to meeting compliance and minimising administrative duplication.</p> <p>CME is concerned that the reference in the Discussion Paper to 'other environmental approvals' could result in regulatory creep. It is not clear why there is a need to include information related to approvals by other regulatory agencies. Further, if it is intended that this information is updated over time this would add to the risk of duplication and administrative burden given that some approvals are updated on a more frequent basis or triggered by a different mechanism than that of the MDCP.</p> <p>CME recommends DMIRS clarify the wording and intent, working with industry to simplify this process to avoid increased administrative burden for industry.</p>
2.1.3 Land uses and stakeholder engagement	<p>CME considers the overall approach to post-mining land use should be principles based since end land use decisions can evolve over time and are dependent on a variety of factors, some outside of the proponent's control.</p> <p>Closure is by nature an iterative process, and therefore the risk of being too prescriptive in the first instance through requirements for significant detailed information may duplicate the MCP. This would also contribute to increased administrative burden related to ongoing updates to the MDCP which may otherwise not be needed if the undertakings relating to closure were kept at an appropriately high level and remain principles based.</p> <p>The concept of stakeholder engagement also requires further clarity to make clear the expectation of DMIRS, with an overarching need to ensure these requirements remain contained and limited to closure. Our industry's experience is that the priorities of stakeholders evolve over time, with discussions undertaken early in a project often more focused on economic and community opportunities.</p> <p>Limitations, regarding detailed next land use discussions, are ongoing throughout a project lifecycle. Land use is often informed by proponent and community priorities which often change over time. It is CME's interpretation that this would be covered appropriately by the proposed MCP process, which is updated more frequently and therefore can reflect these changing priorities.</p> <p>CME recommends that this section remains focused on principles of engagement and confirms at a high level a proponent's commitment to the overall process of working with stakeholders to consult on next land use.</p> <p>Although stakeholder input is important it is not the only factor considered in end land use decisions and may not align with what is possible or allowable. Discussion paper wording regarding post mining land use needing to be 'acceptable' to stakeholders should be re-worded to acknowledge the need for balanced land use decisions making with other factors relevant to consider.</p> <p>Additionally, CME recommends that the definition of stakeholder is amended to reflect those with whom (legal) access agreements are required to disturb land, e.g., 'key stakeholders' rather than all stakeholders.</p>

CME Comments – MDCP and Approvals Statement

Guideline Section

	<p>CME recommends that the current approach with respect to land use be maintained, as per the DMIRS Mine Closure Plan Guidance 2020 which stated: "it may be acceptable for provisional or proposed post-mining land use(s) to be identified, provided that there has been adequate engagement with the key stakeholders and that there is a clear process and timeline to further identify or refine the agreed post-mining land use(s), as part of the stakeholder engagement process." This wording enables post mining land use to adapt to meet current and future requirements of key stakeholders and proponents over time.</p> <p>As currently proposed, the wording in section 2.1.3 of the MDCP guidance is unclear and risks including requirements for detailed information, stakeholder engagement and closure planning that is not appropriate to build into an MDCP.</p> <p>Attempts to lock in a land use at the early stage of a mine is likely to result in sub-optimal outcomes for stakeholders in the future given the variability of options available and the evolving range of economic and community inputs into these discussions. The proposed approach therefore has the potential to stifle consideration of future beneficial land uses, limiting the ongoing iterative planning process.</p> <p>CME recommends that DMIRS clarify if compliance with the requirements of the State's Aboriginal heritage legislative framework (amended Aboriginal Heritage Act 1972) may be considered as satisfying MCP/MDCP requirements with regards to engagement obligations related to indigenous stakeholders. Certainly, there is an opportunity to consider streamlining these requirements in the development of supporting regulation for the amended Aboriginal Heritage Act 1972.</p>
<p>2.1.4 Baseline data and analysis</p>	<p>It is not clear why baseline data collected for the purpose of regulatory processes administered by other regulators is required. If the data has already been provided to another regulator e.g., the Department of Water and Environmental Regulation (DWER), CME recommends that the DMIRS allow for this data to be supplied in the relevant format and not require rework to comply with department specific preference.</p> <p>There is a risk of duplication if a proponent is effectively required to undertake two environmental approvals. CME recommends that the DMIRS clarify their approach to this requirement to ensure it will not produce duplicative outcomes.</p>
<p>2.1.5 Environmental risk assessment and management</p>	<p>The proposal for standardisation has the potential to create issues and rework for industry. Each CME member organisation has their own risk management framework that takes into consideration the context of the operation (scale, location, type of operation) in order to develop likelihood and consequence descriptors that are specific and relevant.</p> <p>Paragraph 1 of the Discussion Paper notes that the DMIRS is proposing a standard environmental risk assessment as well as standard likelihood and consequence descriptors. Some proponents will face significant administrative and internal compliance issues if required to 'map' across from their existing risk assessment processes to a standardised process for this specific purpose. CME recommends that the DMIRS enable a proponent to utilise their existing environmental risk assessment and management processes, similar to provisions in the 2020 guidelines.</p>

Guideline Section	CME Comments – MDCP and Approvals Statement
<p>2.1.6 Environmental and closure outcomes, performance and completion criteria and monitoring</p>	<p>The MDCP guidance states "Completion criteria that will demonstrate the achievement of closure outcomes (note: completion criteria, based on a conservative estimate of closure performance, may be acceptable at the MDCP approval stage, provided that they are capable of objective verification and based on the best available data at the time.)" CME recommends that DMIRS clarify the term "objective verification". The experience of our industry is that this can often translate to a solely numerical target. As outlined in Young et al's² completion criteria guidance, there are other ways of objectively verifying whether something has been achieved or not.</p> <p>CME recommends that the DMIRS consult further with industry to ensure that MDCP criteria are appropriately set to avoid inconsistent application during assessment.</p> <p>Specific amendments in the section recommended by CME are:</p> <ul style="list-style-type: none"> • Paragraph 5, bullet point 6 suggest including 'monitoring frequency'. • Performance criteria should be developed (and approved) to allow for adaptive management allowing for tailoring to be operation specific. CME recommends that clarity on how applicants can develop bespoke conditions and process to agree these with the DMIRS is provided.
<p>2.1.7 Closure Implementation</p>	<p>The MDCP guidance states that closure designs should be presented for key landforms. It should be acknowledged that these designs may be conceptual as, in long lived mines, final landforms can vary significantly from concepts proposed at approval due to new information arising from materials characterisation and stakeholder consultation and changes to mine plans. CME recommends that Paragraph 2, third bullet be edited to insert the word "Conceptual" i.e., "Conceptual closure designs for key landforms to reflect an appropriate information threshold".</p> <p>The document states that DMIRS requires inclusion of a predicted closure cost into the MDCP and details of how the closure cost has been calculated. This information is commercially sensitive and should not be published in a publicly available document. CME and our members are strongly opposed to this requirement and recommend that this be excluded from the document.</p> <p>CME also recommends that further clarity is required as to how DMIRS would approach MDCPs associated with MCPs linked to State Agreement Act tenure. It will be important to ensure there is no misalignment or issues for proponents operating under State Agreements.</p>

² Young, R, Manero, A, Miller, B, Kragt, M, Standish, R, Jasper, D & Boggs, G 2019, A framework for developing mine-site completion criteria in Western Australia. The Western Australian Biodiversity Science Institute, Perth, Western Australia.

Guideline Section	CME Comments – MDCP and Approvals Statement
3 Decision on MDCP	<p>The approval process outlined in the Discussion Paper seems to indicate that there could be instances where an MDCP is not approved or refused by the Minister or their delegate in its entirety, may be approved or refused in part with some activities approved to proceed and other activities refused. While the intent of such flexibility is appreciated, we note that some activities would be linked such that the refusal of one may make the other impossible irrespective of it being approved. CME is concerned that this approach may limit the amount of effort put in place to ensure all activities can be approved. CME recommends that the DMIRS provides greater clarity on the decision-making process and how this process would work should some activities and not others be approved.</p> <p>The section indicates that a proponent can review a draft approval statement, but it is not clear if this then allows for discussion if an activity is refused. Further clarity is sought on whether there is an appeals mechanism for activities that are refused. CME recommends that additional clarity be provided to deliver certainty of process regarding approvals, review, and the prospect of appeal.</p>
4 Expansions and/or alteration to an Approvals Statement	<p>The process for expansion and/or alteration of the Approvals Statement requires additional clarity. Firstly, definition of what constitutes a minor or major update will be important to ensure that definitions are broad enough to avoid adding to administrative burden, while being clearly defined to provide certainty of process. Avoiding a situation whereby the classification of minor and major is subjective is considered important.</p> <p>Additional information is required regarding the process for an update to an MDCP. Particularly to ensure clarity on compliance if the update is to result in new conditions in the Approvals Statement.</p> <p>Clarity is needed to ensure that any new conditions applied as a result of an update do not create compliance risks with regards to past works. Will new conditions have a commencement date to provide certainty on compliance manners and avoid any risk of retrospective conditioning?</p> <p>CME recommends that the DMIRS provide greater clarity on definitions and the process for making amendments as well as advising how this interacts with the Approvals Statement, compliance obligations and MCP iterations.</p> <p>Further CME recommends that the DMIRS develop a list of approved minor update activities or criteria utilising an approved endorsed list of low-risk activities for all MDCPs. This would assist to avoid unnecessary submissions for minor activities that could create burden for the department and proponents. This list could be incorporated into a proponents Approvals Statement.</p>

Guideline Section	CME Comments – MDCP and Approvals Statement
5 MDCPs for Small Operations	<p>CME understands that a different pathway for small operations may be appropriate. However, there is no definition provided to guide industry as to what the DMIRS sees as a small operation. This creates challenges in providing comprehensive feedback to inform the development of further guidance.</p> <p>CME welcomes clarification on the following questions:</p> <ol style="list-style-type: none"> 1. How does this process transition should a 'small' operation expand and move into the 'large' operation category? 2. Can a proponent use this pathway for a minor project change rather than need to amend an existing MDCP? Or if there are various smaller operations that may form part of a larger project hub? <p>CME recommends that DMIRS provide greater clarity on Small Operations and the framework that will guide proponents in lodging their MDCP's.</p>
6 Mine Closure Plans	<p>CME welcomes additional clarity on the following questions:</p> <ol style="list-style-type: none"> 1. Will the 2020 MCP guidelines and guidance remain in place or is the DMIRS proposing that this guidance be updated as well? Further industry consultation is required once the Department clarifies the approach. 2. How is the DMIRS proposing to deal with a submitted MDCP when a site has already been assessed under Part IV of the <i>Environmental Protection Act 1986</i> and a minor change is included in the MDCP but is not yet captured in the MCP? Greater clarity is sought to ensure there is no inconsistency between processes that operate under different regulatory processes and that run parallel. <p>CME is concerned regarding the last paragraph in this section – “Any changes to MCP content requirements will be considered following establishment of the MDCP content requirements.” Although not stated, it could be implied that existing MCP's may be subject to retrospective changes. CME recommends additional wording be added to clarify that existing MCP's would not be subject to retrospective amendment.</p> <p>Greater clarity is required to outline how the DMIRS sees the MCP functioning under this new process, noting the reference to it being more of a planning document however there is significant process uncertainty. CME recommends that the DMIRS provide greater clarity on how this process is intended to work and commit to further consultation with industry in design of the revised MCP.</p> <p>Further CME seeks clarity about whether an update to an MCP triggers an update to an MDCP and/or Approvals Statement (or vice versa). CME is concerned with the prospect of duplication noting both documents address closure in some form, particularly noting the regular updates that may occur with either document. CME recommends that the DMIRS provide greater clarity on the demarcation between the documents with regards to closure and how the DMIRS will reduce risk for inconsistency and compliance risk.</p>

Guideline Section	CME Comments – MDCP and Approvals Statement
<p>7 Approvals Statement and 7.1 Information recorded on an Approvals Statement</p>	<p>Section 7 states that to afford procedural fairness, tenement holders will be provided with the opportunity to review their Approval Statement prior to being issued. Does this process entitle a proponent to request a change to a proposed condition? CME recommends that the DMIRS provide clarity of purpose and process for the review and provide guidance on the ability for conditions to be discussed if a proponents requests alteration.</p> <p>It is noted that the Approval Statement will be made publicly available. To what extent is this document subject to public review? Can other parties lodge an appeal? CME recommends that the DMIRS provide this clarity as part of the broader guidance requested above.</p> <p>Noting that closure is iterative and will change over the life of the operation further clarity is requested on how detailed closure conditions included in the Approvals Statement will be? This could create increased administrative burden for proponents and regulator if changes via updated MCP's create a chain reaction of updates to MDCP's and Approvals Statement. CME recommends that the DMIRS maps out this process to ensure administrative efficiency prior to finalising processes. Further CME also recommends that conditions as related to closure avoid prescriptiveness noting closure outcomes and planning will change over time and will be reflected through revised MCP's.</p>
<p>Attachment 1 – Proposed Standardised Risk Assessment Framework</p>	<p>CME has set out below our significant concerns with the standardised risk assessment approach proposed in the discussion paper. CME recommends that the DMIRS allow for proponents to continue to utilise their own risk assessment frameworks which are informed by their own operations and systems. If the DMIRS remains committed to implementing a standardised risk framework CME would recommend utilising subject matter experts within industry to facilitate the creation of a suitable framework.</p> <p><u>General Comments on proposed standardised risk assessment framework</u></p> <p>Under ISO 31000 the first step in any risk assessment is establishing the context which, from an environmental perspective, can considerably influence the significance of certain impacts. For example, impacts to flora communities in an area of high biodiversity and endemism may be much more significant than a similar scale of impact in other areas, similarly impacts to groundwater levels may not be significant where there are no groundwater dependent receptors. The scale at which organisations choose to conduct their risk assessments (e.g. landform or site scale) will also affect whether risks are comparable or not.</p> <p>It is generally not possible to compare different risks defined using a qualitative risk matrix to draw conclusions about how much riskier one category of risk (e.g. a major risk) is compared to another category (e.g. a minor risk) (i.e. there is no scale that can be used to compare risks, a major risk cannot be said to be two times higher than a minor risk). There is inherent uncertainty associated with closure risks (discussed below), it is not clear what the DMIRS is trying to achieve by mandating a standard risk assessment framework. CME is concerned that this will increase the administrative burden on proponents to run a separate risk process to the company mandated risk process. CME recommends that the DMIRS provide greater clarity as to how this proposed process will reduce duplication and deliver efficiency.</p> <p>Definitions for the following consequence descriptors are required to improve clarity:</p> <ul style="list-style-type: none"> • recoverable, • back to within threshold values,

- back to within percentage of baseline, and,
- back to pre-disturbance.

Inherent uncertainty of mine closure risks

Mine closure risks are considered over a long timeframe (hundreds of years and beyond). There is little data on how post-mining systems behave over these time periods and industry uses modelling and studies to inform professional judgements to estimate consequences and associated likelihoods. This then creates the situation where there is inherent uncertainty associated with these estimates.

CME recommends that the DMIRS reassess their approach to identification of mine closure risks and consider the need for greater flexibility noting the level of uncertainty given the long timeframe.

Consequence Criteria

CME recommends separating the concepts covered within the Rehabilitation and Mine Closure Factor noting that rehabilitation and closure are not necessarily the same and are considered by industry to mean different things.

Further, it is not clear whether the consequence criteria that should be applied to closure risks are limited to those listed against the Rehabilitation and Mine Closure Factor, or whether all criteria should be used. The comments below have been made against all the criteria, predominantly from a closure perspective, but they may be applicable from an operations perspective too.

The proposed consequence criteria are considered impractical noting:

- The significance of an environmental impact is governed by scale / area of impact (e.g., lateral extent), degree / severity of impact (e.g., death of vegetation versus stressed vegetation) and sensitivity of the receptor (e.g., already degraded pastoral area compared to pristine vegetation in an area of high endemism), timeframe over which an impact may occur.
- The current biodiversity criteria does not recognise scale, severity, or sensitivity. They only recognise timeframe to recovery. This could result in perverse outcomes that mean small areas of non-recoverable impact to areas of low environmental sensitivity are considered severe consequences, whereas large scale, severe impacts to sensitive receptors recoverable over a generational timeframe (25 years) would be assigned a slightly lower risk.
- The water resources consequence criterion does not consider the quality of the receiving environment nor impacts to receptors; it simply focuses on whether there is a change to the receiving environment and the time period over which the change will persist. This means that any permanent residual drawdown associated with a mine void will be rated as a severe impact regardless of the significance of the drawdown and whether it has an impact on a receptor or not. As an example, a 10 m drawdown which impacts groundwater dependent vegetation would be considered to be the same consequence as a 2 m drawdown of an already deep groundwater system that only extends a few 100 m from a mine and does not impact any groundwater dependent receptors.
- The land and soils criteria have a contaminated sites focus and similarly do not consider whether there is an impact to receptors. So, for example elevated levels of a particular contaminant below ecological impact criteria may migrate offsite

- and would be considered to represent the same severity as a contamination plume with levels of contaminants an order of magnitude above ecological impact criteria.
- The alteration or disturbance to habitat criterion under the rehabilitation and mine closure factor is inconsistent with the other criteria. The severe consequence criterion for this factor suggests that any residual effects will be severe. Again, the significance of any impacts arising from these effects is not considered. The residual effects could be quite minor.
 - Mandating the consequence criteria limits organisations' ability to recognise the sensitivities associated with their particular circumstances and the views of their stakeholders which is inconsistent with ISO 31,000. For example, the criteria do not consider any impacts to local communities or cultural values.

Risk Register

The risk register format may be a format that is helpful for the DMIRS when assessing approvals, but there should be no expectation that this format continues through to the standalone MCP as it is not a particularly useful format for managing closure issues which places the focus on analysing risks associated with each domain so that these risks can be properly controlled in the designs and management techniques applied to that domain.

A risk register with too many risks loses focus and can result in worse management outcomes than one that is more focused as it makes it difficult to pick out the issues of importance for management. Using the MDCP format would mean that:

- Operational risks to fauna such as vehicle strikes would become a distraction in the closure risk assessment.
- Risks associated with specific domains would be spread across several factors and it would be harder to consolidate the key management measures required to be integrated into closure designs and management techniques.

The more columns that are added to a risk table, the less room there is for including substantive information that conveys the available information on the context and significance of a risk and for justifying risk ratings.

While the information justifying risk assessments is generally presented in the body of a document, this gets lost when assessing officers are reading the risk register and often assessing officers challenge risk ratings if justifying information is not cited in the risk register, which results in significant time for proponents to respond to challenges.

Mandating a different risk register format for MDCPs compared to corporate or MCP registers results in a higher administrative burden for proponents.

CME recommends that the DMIRS reassess the practicability of implementing a standardised process and consider developing principles that proponents should consider for their own assessments to meet as part of an assessment criteria.

CME recommends that the DMIRS provide an example Approvals Statement as applicable to a larger mining development to demonstrate how the document would look where it applies to a multi tenement site. E.g., 50 tenements. Noting some projects can incorporate hundreds of tenements.

Attachment 2 – Example Approvals Statement

Attachment 3 – Outcomes Based Conditions

Outcomes based conditions – General:

Similar to the comments on Page 5, Section 2.1.3 of the MDCP guidelines above, the proposed outcomes pre-suppose a vegetated post-mining land use. If these are mandated in the Approval Statement, then this limits the likelihood that a proponent may explore a land use that may be more beneficial due to the potential complexity in changing these outcomes.

CME recommends that the DMIRS engage with industry to develop more appropriate outcomes-based conditions consistent with current industry practice that are realistic and achievable. CME has provided commentary below to some specific proposed draft outcomes, however, it is CME’s position that all outcomes require further work per our recommendation.

Further, **CME recommends that the DMIRS engage with the DWER, to consider firstly the need for DMIRS to regulate these outcomes outside of the regulation occurring under Part IV and V of the Environmental Protection Act (EP Act) and if needed to align with DWER outcomes-based conditions against each value.** This may be achieved by way of a memorandum of understanding that could see consistency across the Approvals Statement and EP Act assessment processes.

DMIRS Environmental Factor – Biodiversity

Outcomes Based Conditions – Flora:

CME is concerned about the practicality of the proposed condition: "No loss of abundance and/or diversity of native vegetation throughout all phases of mining, as a result of undertaking mining, unless otherwise approved." It is extremely difficult to avoid any loss of abundance and diversity of native vegetation due to mining, as is often the case with any land use, there will be an impact. Perhaps a focus on conservation of significant flora species, locally or regionally significant vegetation communities should be the basis for the draft outcome.

Outcomes Based Conditions – Fauna:

CME is concerned about the practicality of the proposed condition: "No adverse impacts on the abundance and diversity of native fauna species as a result of mining." It is extremely difficult to avoid any loss of diversity and abundance of fauna due to mining, as is often the case with any land use, even if it’s very small, there is still some loss. Similar to Part IV, it’s the significance of the species and the significance of that loss that is important and should form the basis for the draft outcome.

DMIRS Environmental Factor – Rehabilitation and Mine Closure

Outcomes Based Conditions – Landforms:

CME is concerned about the practicality of the proposed condition: "Creation of safe and stable landforms that minimises erosion." This may not be appropriate as a standard outcome as some surface water diversions are designed to erode to ensure sufficient sediment supply downstream.

CME is concerned about the practicality of the proposed condition: "Creation of safe and stable landforms that supports appropriate vegetation." There may be a land use such as solar power, or future industrial where vegetation is not required or desirable.

CME is concerned about the practicality of the proposed condition: "Constructed waste landforms will be consistent with local topography." It may not be possible to meet this outcome for an overburden landform where the surrounding land is flat. It implies that in this instance, overburden should be relocated to the pit.

The draft outcome for 'landforms' state that "Constructed landforms will be consistent with local topography". This is not always possible, particularly when the DMIRS is assessing or re-assessing previously approved historic or legacy landforms or features. How does the DMIRS intend to managed/approve outcomes for legacy landforms?

Current wording implies that only a single land use may be selected, however, given the scale of these projects often a combination of more natural areas with a development to generate a source of income (e.g. solar) may be the most likely outcome. The same "mixed" philosophy may also apply to soil conditions and vegetation. **CME recommends that the MDCP allow for mixed post-mining land uses and landforms.**

Attachment 3 - Outcomes Based Conditions - water and drainage

The Draft MDCP outcome is: "Surface drainage patterns are re-instated and consistent with the regional drainage patterns". This may not be practical if there is a permanent surface water diversion around a pit, for example, it may not be possible to reinstate drainage patterns.

Attachment 3 - Outcomes Based Conditions - surface water / groundwater

The Draft MDCP outcome is: "Surface water and groundwater levels and characteristics reflect original levels and characteristics and / or support the target ecosystem and post-mining land use". This could be interpreted to mean that where there is permanent residual drawdown post-closure, but the water is naturally too deep (prior to mining) to be used by ecosystems or post-mining land uses then this outcome will not be met. The word "support" should be changed to "do not detrimentally impact".

Attachment 3 - Outcomes Based Conditions - soil condition

The Draft MDCP outcome: "Suitable growth medium is in place and soil properties achieved to facilitate rehabilitation and agreed post-mining land use" pre-supposes a vegetated outcome and should be amended with, where the post-mining land use requires a vegetated outcome.

Attachment 3 - Outcomes Based Conditions – vegetation

The Draft MDCP outcome: "Rehabilitated landscapes are comparable to appropriate reference vegetation communities and consistent with the post-mining environment" pre-supposes a native vegetation outcome and should be amended with, where the post-mining land use is a native vegetation ecosystem. There may be instances where the post-mining land use is a vegetated outcome consistent with a different non-native vegetation type or does not require vegetation at all.

Attachment 3 - Outcomes Based Conditions – fauna

The Draft MDCP outcome: "Rehabilitated areas provide appropriate habitat for native fauna, indicative of the target ecosystem. This is only applicable if the post-mining land use is a native vegetation ecosystem and should be amended with "Where a native vegetation post-mining land use is the target ecosystem".

Attachment 3 - Outcomes Based Conditions - ecosystem function and sustainability

The Draft MDCP outcome: "The rehabilitated ecosystem has function and resilience indicative of target ecosystem and post-mining land use." pre-supposes a vegetated outcome and should be amended with where the post-mining land use requires a vegetated outcome.

Compliance and Safety

The draft outcome for 'compliance and safety' notes that the "disturbed mining environment is made safe to humans and animals". CME agrees that measures should be in place to prevent risks or harm to humans and animals. However, it is not necessarily achievable to totally prevent humans or animals accessing specific mine features in all scenarios. For instance, how does a proponent prevent the inadvertent access of avifauna, reptiles and mobile mammals from pits even when they are signed, banded and fenced? **CME recommends that the DMIRS provide additional information or define what fauna safety means.**