Care and Maintenance, Closure and Relinquishment – A Legal Perspective

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Some recent headlines

- ‘Fortescue Metals Group rumoured to be reviewing possible Cloudbreak mine closure’ (SMH, 27 November 2014)
- ‘Sinosteel iron ore mine closure fuels unease in WA Mid West communities’ (ABC Rural online, 15 April 2015)
- ‘Iron ore carnage: West Australian mines could close by July’ (SMH, 7 March 2015)
- ‘Rare yellow diamond mine Ellendale closes doors, workers raise wage concerns’ (ABC News online, 7 July 2015)
Overview
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A legal perspective on…

- **Mine Suspension**: environmental regulatory requirements for transitioning assets to ‘care and maintenance’ phase
- **Mine Closure**: environmental framework for mine closure and relinquishment in Western Australia
Care and Maintenance v Mine Closure

• *Care and maintenance* is the temporary cessation of mining operations, where infrastructure remains intact and the site continues to be managed.

• *Mine closure* is a whole-of-mine-life process, which typically culminates in tenement relinquishment.

• In contrast with care and maintenance, mine closure has the specific goal of ‘completion’.

• The EPA defines ‘completion’ as:

  The goal of mine closure. A completed mine has reached a state where mining lease ownership can be relinquished and responsibility accepted by the next land user (DITR 2006a).
Care and Maintenance v Mine Closure

Regulatory frameworks:

• **Care and Maintenance** – administered by DMP under *Mines Safety and Inspection Act 1994* (WA)

• **Mine Closure** – administered under:
  
  o by DMP under the *Mining Act 1978* (WA)
    – required by condition on Mining Act tenure (ss 82(ca), 82A, 84AA)
  
  o by EPA under Part IV of the *Environmental Protection Act 1986* (WA)
    – for certain State Agreement mines; or
    – where the EPA considers that there is a significant impact or risk and identifies Rehabilitation and Closure as a preliminary Key Integrating Factor for a proposal (EPA 2013a).
Care and Maintenance
Care and Maintenance – Mines Safety and Inspection Act

Putting a mine into ‘care and maintenance’ will trigger requirements under the *Mines Safety and Inspection Act 1994* (WA), including:

- notification of suspension to District Inspector (section 42, MSIA)
- submission of mine plan to State Mining Engineer (section 88, MSIA)

Note also DMP’s policy in relation to care and maintenance planning (DMP, 2009) and *Guidelines for Preparing Mine Closure Plans* (DMP/EPA, May 2015)
Care and Maintenance – Managing Environmental Obligations

There are a range of regulatory requirements and instruments to consider before and during the care and maintenance phase, for example:

• Ministerial statement (Part IV, EPA), licences (Part V, DER) and clearing permits (Part V, DMP) under the *Environmental Protection Act 1986* (WA)

• Ministerial approval under the *Environment Protection and Biodiversity Conservation Act 2000* (Cth) (DotE)

• Approvals for off-lease infrastructure (e.g., accommodation camps) (local government)
Care and Maintenance – Managing Environmental Obligations

• Scope for amendments to approvals and / or management plans for duration of suspension
• Consider if further approvals required to accommodate changes
• Maintain approvals during period of suspension
• Also consider security of tenure and Mining Act requirements – e.g., expenditure requirements, obligation under State Agreement to implement approved proposals
• Stakeholder engagement is key
Mine Closure
Mine Closure – Planning Requirements

• Regulatory overlap – policy position stated in *Guidelines for Preparing Mine Closure Plans* (DMP/EPA May 2015)
• 2015 Guidelines build on 2011 Guidelines
• Plans to be reviewed and approved every 3 years
• Revisions may also be necessary if underlying proposal is changed
Mine Closure - Tenement Relinquishment

- Guidelines – relinquishment requires formal acceptance by DMP that obligations under mine closure plan satisfied
- Statutory position – Form 12
- DMP is reviewing formal relinquishment process (see 2015 Guidelines)
- Note that State Agreements may:
  - require Ministerial consent to surrender, subject to rehabilitation in accordance with approved proposals
  - contain indemnities in favour of the State which will survive surrender
Mine Closure – Residual Liabilities

- Continuation of tenement holder’s liability after surrender, or forfeiture of mining tenure (section 114B of the Mining Act):
  - rents and royalties
  - obligations imposed, or acts or defaults up until date of expiry, surrender or forfeiture
- Former holder continues to have right of entry for remedial works (section 114C)
Mine Closure – Residual Liabilities

• Enforcement options – prosecution for breach of condition:

  On the completion of operations or progressively when possible, all waste dumps, tailings storage facilities, stockpiles or other mining related landforms must be rehabilitated to form safe, stable, non polluting structures which integrated with the surrounding landscape and support self sustaining, functional ecosystems comprising suitable, local provenance species or alternative agreed outcome to the satisfaction of the Executive Director, Environment Division, DMP.

• Liability under *Contaminated Sites Act 2003* (WA) relevant

• Closure notice under *Environmental Protection Act 1986* (WA)

• Section 9A of the *Mining Rehabilitation Fund Act 2012* (WA) facilitates debt recovery for rehabilitation of abandoned mine sites

• *Abandoned Mines Policy* (Consultation Draft) (DMP, July 2015)
Conclusion

• Increased public and regulator interest in mine closure/care and maintenance due to market influences
• Environmental obligations continue during ‘care and maintenance’ phase – stakeholder engagement critical
• Relinquishment requirements to be the subject of further policy development
• Reversionary rehabilitation risk likely to be an area of continued focus for the State
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