



Latrobe City Council Submission to the Proposed Trailing Liabilities Scheme.

March 2023

1. Introduction

Latrobe City Council thanks the Department of Energy, Environment and Climate Action for the opportunity to provide this submission to the Proposed Trailing Liabilities Scheme.

The manner and extent of rehabilitation of the Latrobe City declared mine areas will have lasting social, economic and environmental implications for not just the Latrobe Valley, but for the entire Gippsland region and water catchment.

Mine rehabilitation must therefore consider the impacts for decades if not centuries. Bold policy and strong direction from government will be necessary to support mine rehabilitation, with consideration also given to the repurposing of the land assets and the ongoing maintenance and aftercare necessary to achieve beneficial outcomes.

Latrobe City Council's ongoing participation in the development of policy and subsequent regulations continues to seek to ensure that both the immediate and long-term interests and obligations are fully and transparently achieved.

Latrobe City Council (Council) supports the concept of implementing trailing liabilities to ensure that the rehabilitation of former mining sites is completed fully and effectively and that obligations cannot be avoided by the responsible parties.

Council is also supportive of and acknowledges the State Government's confirmation of responsibilities to effect desired mine rehabilitation outcomes, including occurrences in which the State Government will utilise its powers to ensure the provision of ongoing care, monitoring and maintenance.

Latrobe City Council's submission on this matter relies on previously endorsed submissions by council on declared mine related matters in our area.

2. Analysis

It is understood that the Trailing Liabilities provisions will strengthen the requirements for operators to deliver rehabilitation operations. The provisions will apply to Victoria's declared mines, which are the three Latrobe Valley mines. The changes are intended to provide the Victorian State Government with a legislative framework that allows it to respond effectively to the challenges of rehabilitation of the former coal mine sites.

The coal mining industry is under considerable financial and market stress due to changes in the local and global situation including aging infrastructure; increased awareness of and pressure to reduce greenhouse gas emissions; and the increasingly lower costs of renewable energy. These stressors provide greater uncertainty around on-going rehabilitation responsibilities.

Similar Trailing Liability legislation already exists in international jurisdictions including Norway, the United Kingdom and the United States and were passed by the Commonwealth Government last year (2022) for decommissioning offshore gas infrastructure, following extensive policy research.

In September 2021 the Federal Parliament passed the *Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Act 2021* (Cth) (the Act), in response to the Northern Oil and Gas Australia (NOGA) Pty Ltd liquidation. NOGA went into liquidation due to financial stress, leaving it unable to decommission the Northern Endeavour floating production, storage and offtake (FPSO) facility and the field. The Act introduces a trailing liability mechanism for decommissioning offshore oil, gas and carbon capture and storage assets.

The Act only applies where the current titleholder is unable to meet its decommissioning obligations or where previously completed decommissioning work is defective. The new provision will allow a last resort option for the State Government to enforce rehabilitation obligations, with the ability to place joint responsibility on a wider range of non-titleholder parties, including joint venture partners, secured financiers and royalty holders. Trailing liability is intended to be a last resort; the primary obligation to decommission the asset still falls upon the current titleholder.

There is no conceptual reason why trailing liability should be limited to offshore oil, gas and carbon capture and storage assets.

The potential cost exposure for traditional energy assets is considerable and the immediate environmental risks from a catastrophic failure makes their safe decommissioning a priority. However, the fundamental issue of an insolvent or incapable titleholder ultimately passing a 'clean-up bill' back to the taxpayers is something which one may expect to have broader application than just under the Act.

Consequently, having regard to the very significant pipeline of decommissioning activities noted above, we support the introduction of State or Federal trailing liability legislation which extends decommissioning liability to a far wider class of assets.

It will become increasingly important for parties to consider their potential decommissioning liability exposure and structure transactions accordingly. This may include a consideration of a variety of risk mitigation measures such as security arrangements, indemnities in favour of prior asset holders and cross guarantees. Such exposure may also have an effect on the commercial value of assets which are close to the end of their life, which will also become an increasingly important consideration for parties dealing with these assets.

3. Historical submissions

Latrobe City Council previously provided a submission on the draft Declared Mine Regulations. The submission was provided within the broader context in which the regulation sits and considers how they may influence overall outcomes, including opportunities identified by the Latrobe Valley Regional Rehabilitation Strategy – Land Use Vision. The interconnectedness of the Latrobe Valley mines, in geographical, hydrogeological and social contexts particularly, creates unique issues associated with the rehabilitation of these mines.

Is it considered that Council's support of the Trailing Liabilities Scheme does not alter the issues previously raised by Council.

A summary of priorities provided in the previous submission which Council considers to be impacted by Trailing Liabilities and warrant consideration are as follows:

- The achievement of sustainable and beneficial outcomes;
- Consideration to the interrelationship between mine rehabilitation planning and works; and
- Land tenure arrangements.

3.1. The achievement of sustainable and beneficial outcomes:

Latrobe City Council seeks to ensure that the rehabilitation of declared mine sites delivers safe, stable, sustainable and beneficial outcomes in both the immediate and long-term future. This position has been made clear in previous resolutions and submissions of Council.

It is understood that under Victoria's legislation, rehabilitation must be operator-led and funded, and the trailing liabilities scheme further strengthens this requirement, however, this does present a risk that lower cost rehabilitation methods are pursued and result in a reduced focus on longer term thinking and achievement of beneficial outcomes.

This approach understandably seeks to minimise exposure of the State Government to future liabilities and risks from the rehabilitation of the three Latrobe Valley Declared Mines. However, the State Government's role in mine rehabilitation should not be limited to a 'regulatory' function.

The introduction of minimum standards in which operators must comply may hinder opportunities to achieve successful outcomes and opportunities envisaged by the Latrobe Valley Regional Rehabilitation Strategy (LVRRS) Land use Vision and those opportunities put forward by the community. These issues still need to be considered in the light of the Trailing Liabilities Scheme.

3.2. Interrelationship between mine rehabilitation plans

The achievement of beneficial outcomes must acknowledge the shared and interwoven interests in mine rehabilitation. While rehabilitation across all three mines is differentiated by geology, geotechnical factors, business ownership and scale they have an overwhelming, compelling and inter-related commonality and share potentially competing interests, particularly where each is reliant on the utilisation of significant water resources.

The regulations do not acknowledge or require each operator to address this aspect within the preparation of rehabilitation plans. If responsibility for mine rehabilitation is further removed from government control, this may impact the ability to ensure a coordinated approach.

3.3. Land Tenure Arrangements

Land tenure of mine areas presents challenges to achieving an integrated rehabilitation strategy, including the realisation of opportunities outlined by the draft LVRRS Land Use Vision. Achieving an integrated outcome and repurposing of mine land will require coordinated land use planning, ongoing maintenance and management, along with the consideration of the relationship between declared mine land.

Recognising the mine areas are owned by a mixture of entities, rather than in single ownership, this presents further challenges, in particular the ability to provide public access. Further, it is considered highly likely that existing owners will seek to recoup some rehabilitation cost through “saleable lands” which may result in the creation of disconnected unusable plots of ground.

Current and future land ownership arrangements have been considered by Council in its previous submission to the LVRRS. This challenge is recognised within the LVRRS Vision which states:

- *“Much like any private landowner, the current owners may seek to reuse or sell parts or all of this land, subject to the need for rehabilitation and the planning scheme controls of the day. This will make planning for the sites complex, including allowing for public access.”*

The Trailing Liabilities Scheme should result in on-going liability even in the event of land sales, or potentially reduce the likelihood of sale, however, Council resolved at the 4 June 2018 Council Meeting that:

- *“The land holdings of Engie, Hazelwood Power and other companies associated with the Hazelwood Power Station and Mine are transferred to the ownership of the Victorian or Federal government to provide a coordinated planning approach to the continued use of the mine and community benefit following mine closure.”*

The simplest way that land tenure challenges might be managed where continuous land tenure across titles is necessary or preferable to achieve beneficial outcomes, is that this land is sold or transferred to a single entity. It is reasonable therefore to explore a Government ownership option where necessary to the achievement of agreed final landforms and realisation of beneficial outcomes, or where public access is proposed.

The ability of Government to undertake this function is enabled by the Mineral Resources (Sustainable Development) Amendment Bill 2019, passed through the Victorian Parliament on 10 September 2019, which introduces the establishment of a Latrobe Valley-based Mine Land Rehabilitation Authority and Post Closure Fund. Latrobe City Council still support an investigation into the feasibility of such an option.