



INFORMATION FOR CONSULTATION

PUBLIC RELEASE OF DRAFT STATUTORY MINING PROPOSAL AND MINE CLOSURE PLAN GUIDELINES AND GUIDANCE NOTES FOR COMMENT

Documents released for public comment identify the form and content of mining proposals and mine closure plans and provide guidance on how to prepare documents in accordance with those requirements.

Review of guidelines

The *Mining Act 1978* (the Mining Act) refers to “guidelines” as the mechanism for mandating the form and information required in mining proposals and mine closure plans. The guidelines are prepared by the Department of Mines, Industry Regulation and Safety (DMIRS) and endorsed by the Director General as the guidelines under section 70O(1) of the Mining Act, and as such form part of the statutory requirements. In most circumstances documents titled “guidelines” are only supporting information, however as these Statutory Guidelines are referred to in the definition of a mining proposal and mine closure plan in the legislation they form part of the mandatory requirements. To date, DMIRS has maintained guidelines for both mining proposals (2006 and 2016) and mine closure plans (2015).

A mining proposal or mine closure plan can only be a valid application if it meets the requirements as identified in those guidelines.

In response to industry feedback the Department has reviewed how the mandatory form and content requirements for mining proposals and mine closure plans are presented in its guidelines. The review was informed by recent court decisions that had implications for regulators and decision makers, identifying the need for mining proposal and mine closure plan mandatory requirements to be unambiguous and provide clarity in how information is considered in decision making.

The new Statutory Guidelines with clear mandatory requirements will make it easier for industry to prepare submissions, and assist the Department to clearly identify whether an application meets the mandatory requirements of the form and content.

In addition, DMIRS recognises that more detailed guidance material is useful when developing submissions and compiling the information required by the Statutory Guidelines. Therefore DMIRS has retained the existing guidance information from the Guidelines for mining proposals in Western Australia (2016) and Guidelines for mine closure plans (2015) and republished it into Guidance on how to prepare applications.

1. What are the documents included in the package for consultation?

Statutory Guideline for mining proposals in Western Australia

Statutory Guideline for mine closure plans in Western Australia

The information from the existing Guidelines for mining proposals in Western Australia (2016) and Guidelines for mine closure plans (2015) has been restructured so that the mandatory requirements for a mining proposal and mine closure plan are clear and each of the documents has a clear purpose and intent for how it is considered in the regulatory process. Part 1 of the Statutory Guidelines applies to most mining operations and carries-forward the existing risk and outcome based model, and Part 2 applies to clearly defined 'small mining operations'.

Following consultation and further review, the Statutory Guidelines will supersede the existing Guidelines for mining proposals in Western Australia (2006), Guidelines for mining proposals in Western Australia (2016) and Guidelines for mine closure plans (2015).

The Statutory Guidelines framework will come into effect in early 2020.

Environmental Objectives Policy

This takes the existing environmental factors and objectives framework from the Guidelines for mining proposals in Western Australia (2016) and places it within a stand-alone policy.

Guidance on how to prepare a mining proposal

Guidance on how to prepare a mine closure plan

The Guidance documents carryover the majority of information from the Guidelines for mining proposals in Western Australia (2016) and Guidelines for mine closure plans (2015) and incorporate the requirements stated in the Statutory Guidelines.

Supporting Guidance information for Part 2 (small mining operations) submissions is included in the Small Operations mining proposal and mine closure plan pro forma appended to the Statutory Guidelines.

2. What are the changes?

Small Mining Operations are now explicitly referenced in the Statutory Guidelines.

The requirements for Small Operations are stipulated in Part 2 of the Statutory Guidelines, with unambiguous eligibility criteria. The mining proposal and mine closure plan for Small Operations pro forma have also been included. DMIRS continues to encourage potential applicants to contact a DMIRS Environmental Officer prior to using the pro forma. Further detail on the changes is provided below under question 6.

All other mining proposals and mine closure plans must be risk and outcomes based

Part 1 embeds the mandatory requirements of the existing 2016 mining proposal Guidelines, such as mining proposals including a risk assessment, environmental outcomes and a description of the environmental management system that will be implemented. DMIRS still encourages proponents submitting a mining proposal under Part 1 to submit their mining proposal for the entire operation (i.e. the 'environmental group site'); however mining proposals for specific activities can also be submitted in this format. Further information is available under question 4 and 5.

The Guidance documents incorporate updated information

The Guidance documents have been updated to reflect machinery of government changes, and include some revisions such as updated guidance on risk assessment and environmental outcomes reflective of the Guidance Note – Environmental Risk Assessment for mining proposals and mine closure plans (2018) and Guidance Note – Environmental Outcomes for mining proposals (2018); and ensuring consistency of terminology across mining proposals and mine closure plans.

3. Why are they changing?

Industry feedback to simplify the current Guidelines and clarify the mandatory requirements was the original driver for a review. Since the review commenced two court decisions have increased the need for having unambiguous mandatory requirements and clarity in how information is considered in decision making:

- The Forrest and Forrest decision highlighted the need for applications and application procedures to strictly comply with the legislation, of which these guidelines form a part. In particular, mining proposals used to support a mining lease application must strictly meet the form and content requirements of the Statutory Guidelines.
- The Quinlan Review highlighted the need to be clear about what policy information is being considered in decision making, resulting in decision making authorities needing to more clearly identify the purpose and content of its publications.

Statutory Guidelines with clear mandatory requirements will make it clearer for industry when preparing submissions, and assist the department to clearly identify whether an application meets the mandatory requirements of the form and content.

4. What do the changes mean for existing mining operations?

From the time the Statutory Guidelines framework comes into effect in early 2020, all mining proposals and mine closure plans will need to be submitted to meet the requirements of the Statutory Guidelines. This means that mining proposals and mine closure plans will need to either be in accordance to Part 1 of the Statutory Guidelines (risk and outcome based) or Part 2 (small mining operations).

5. What do the changes mean for the previous transition arrangement under the 2016 Guidelines?

From 1 January 2017, all new mining projects were required to submit a mining proposal in accordance with the 2016 Guidelines. The 2016 Guidelines required that the mining proposal incorporated information for all tenements associated with the project's 'environmental group site'. Mining operations with existing, approved mining proposals were allowed a transition period of six years to re-submit a mining proposal in accordance with the 2016 Guidelines.

The Statutory Guidelines now require that mining proposals are submitted either in accordance with Part 1 (risk and outcome based) or Part 2 (small mining operations). Part 1 incorporates the mandatory requirements from the 2016 Guideline. However, while DMIRS continues to encourage proponents to submit a mining proposal for the entire environmental group site, Part 1 (risk and outcome based) mining proposals can now be submitted for individual activities.

Hence there will no-longer be a 6 year transition period specifically in relation to the 2016 Guidelines.

6. What do the changes mean for small mining operations?

Inclusion of Small Mining Operations requirements into the Guidelines: Part 2 of the Guidelines are specific to Small Mining Operations requirements. The reforms ensure that Small Mining Operations mining proposals can continue to be used to support Mining Lease applications.

Clear Criteria: The Statutory Guidelines include revised criteria for small mining operations. The criteria have been re-worded from the 2018 Small Mining Operations mining proposal and mine closure plan pro forma in order to ensure that there is no ambiguity about which operations can submit use this form. To ensure that the revised wording maintained the existing thresholds as much as possible, DMIRS analysed the activities that had previously been approved on the mining proposal and mine closure plan for Small Operations form.

Inclusion of the Pro Forma: The mining proposal and mine closure plan for Small Operations pro forma have also been included in the Statutory Guidelines so applicants can be confident that it will be accepted for assessment by DMIRS and can be used to support mining lease applications.

There is now a separate mine closure plan pro forma to facilitate the submission of revised mine closure plans, noting all mining proposals must also include a mine closure plan.

7. Are there any changes for prospecting activity approvals?

No, the Statutory Guidelines framework does not impose changes to prospecting activities or the Programme of Work – Prospecting form. The changes ensure the Small Mining Operations pro forma can be used for Mining Lease applications.