

Purpose

The purpose of this document is to define the core principles of the Legacy Mines Program's expenditure and funding priorities.

Scope

These guidelines set out considerations for prioritisation of projects and the expenditure of the Legacy Mines Program budget.

Legacy mines are former mining sites requiring remediation where no individual or company can be held responsible for their management or rehabilitation. These sites are alternately known as derelict or abandoned mines.

Generally, responsibility for legacy mines rests with the landowner. No Government agency has statutory responsibility for the remediation of legacy mine sites.

Modern day regulation means that current operations are responsible for rehabilitation.

Core principles

1. Legacy Mines Program

The Legacy Mines Program (LMP) is a NSW Government initiative that assists landholders by delivering and managing works to reduce risks from legacy mine sites.

LMP has a focus on public safety and improving the environment through remediation of historic and abandoned mines. The LMP is administered by Mining, Exploration and Geoscience, part of the Department of Regional NSW.

Due to the constrained budget available to the program, LMP progressively rehabilitates sites by managing the highest risk elements on site.

Expenditure of LMP funds is prioritised by several considerations including:

- Public safety risk presented by the mine
- Environmental risks posed by the mine
- End use of the land impacted by the mine
- Cost effectiveness of rehabilitation or remediation works; and
- Benefit of expenditure to the people of NSW.

2. Projects considered by the LMP

LMP funding will only be used for investigations and works related to the rehabilitation and management of legacy mine sites.

LMP requires that the site must have had a mining title approved under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*, or their predecessors.

The LMP does not fund:

- Remediation or rehabilitation of sand or gravel quarries, road base pits, or sites that were the subject of a Private Mining Agreement or mineral owner authority.
- Remediation of damage covered by the *Mine Subsidence Compensation Act 1961*
- Remediation of sites that cannot demonstrate a clear and significant link to former mining operations.

Projects are only considered for funding when no person or company with direct responsibility for the rehabilitation can be located.

In rare circumstances, where there is a clear and significant connection to a legacy mining operation, the LMP may recommend works to rehabilitate, remediate and manage off-site area/s impacted by former mining operations (for example, clean-up of off-site movement of contamination or remediation of a processing site that was clearly linked to an adjacent or nearby mining operation).

Projects will not be funded retrospectively, and all works funded by LMP are generally managed by program staff.

2.1 Cost effectiveness and lasting benefits

Projects will only be funded if they result in a net benefit and where they benefit the community or environment of NSW.

Projects will not be funded where the works themselves may cause more harm than the public safety or environmental risk presented by legacy issues.

Projects with long term benefits will be prioritised over short term management of impacts.

2.2 Land tenure considerations

Works that have a public benefit are prioritised over projects that only have a private benefit, unless hardship and equity considerations are deemed to justify works. Generally, this means that works on public land will be prioritised over works on private land. Under some circumstances, such as where the Government has failed to retain sufficient security bonds, the LMP may undertake works on private land, however, if only private benefits arise, ministerial direction will be required.

2.2.1 Public land

Priority is typically given to Crown Land (which includes National Parks, State Forests and other land managed by public authorities). However, responsibility for long term management of the sites rests with the relevant organisation that manages the land.

2.2.2 Private land

Works on private land may attract funding if the site:

- Is a significant public safety risk (however, generally safety works are not funded on private land as it is difficult to prove a wider public benefit)
- Has a significant offsite environmental impact
- Had previous investment by the LMP that requires maintenance

- Is clearly affected by a legacy mine impact that significantly affects the use of the land
- Has been subjected to a mining operation for which forfeited security bonds are held by the department.

Works on private land will typically not be funded where the owner of the land has acquired possession of the land:

- After the commencement of mining activities or mine related impact; or
- The mining was undertaken pursuant to a Private Mining Agreement or a mineral owner authority

Due to the private benefit typically resulting from any works on private land, and where a clear public benefit cannot be demonstrated, ministerial direction will be required before any works on private land are funded by the LMP.

Owners of private land would be expected to contribute to the costs of any works undertaken on private land unless hardship and equity considerations are satisfied. **Appendix A** sets out matters that should be considered before recommending to the Minister that works on or benefiting private land should be partly or wholly funded through the LMP.

2.3 Prioritisation of projects

The LMP receives an annual allocation from the NSW state budget. This figure was \$2.8m for the 2019-2020 financial year. The annual budget is lower than the amount required to completely remediate all sites to modern standards. Therefore, the LMP progressively rehabilitates sites, focusing on the highest risk elements.

There are 645 mine sites listed on the LMP database (LMPDB) as of December 2019. Not all these sites present an environmental or safety hazard.

Sites that present a public safety or environmental risk are the focus of the LMP. New sites may be added to the LMPDB as they become apparent, however there is a presumption that most of the higher environmental risk sites have been captured by the Program since its inception in 1974.

For LMP funds to be spent in a manner which gives maximum return to the State, a transparent decision framework enables the LMP to prioritise projects for funding, determining which high priority projects are to be funded in any given year. A state-wide screening level risk-assessment has been completed and risk categories have been assigned to all sites on the LMPDB.

2.3.1 Identification of high priority projects

A high risk in public safety or harm to the environment determines the prioritisation of projects for expenditure; public safety is the highest priority for the program.

Risk has been assessed via the state-wide screening level risk assessment, which allocates negligible to extreme ratings for safety and environmental risk to each site. This allows comparison of risks posed by each site against others in the LMPDB. New sites are ranked and programmed for works based on the risks they pose. Generally, projects that address extreme or high-risk issues are funded by the Program.

Situations where downstream or other neighbouring properties become impacted as a result of a legacy mine fall into the highest-risk categories. To satisfy the program policy, these impacts are required to be treated at the source.

The use of environmental and public safety risk assessments are used to guide the identification of high priority projects. The risk assessments are reviewed regularly to determine if the risk profile has changed over time, as a result of works.

Examples of situations which may constitute a high risk include:

- Public safety risks such as:
 - Unstable and dangerous plant, structures, waste dumps, open cut pits, open shafts and adits, highwalls, excavations and ponded water on high use public land
 - Harmful surface contamination in an area of high visitation on public land
 - Pollution from mine waters and leachate from mine waste that may affect the beneficial use of surface or ground water
 - Contaminated dust migrating offsite
- Environmental risks such as:
 - Air and water pollution in the area surrounding the site which may affect local environments or downstream ecosystems
 - Impacts to ecological features of high conservation or scientific value (e.g. threatened species, communities or populations)
 - Disturbance and/or contamination that seriously restricts the beneficial or productive re-use of the site
 - Significant degradation/erosion of the site
 - Significant visual degradation of the site

The risk identification process considers the likelihood of the potential hazard being realised. For example, publicly accessible areas of high visitation will generally be prioritised over less accessible areas, particularly where public safety is an identified hazard.

Environmental and safety hazards associated with remediation works are identified during design and approval of the works.

Notwithstanding the risk assessment process, it is possible for the LMP to fund projects with negligible to minor risks where there is a clear justification for doing so, opportunistically, or if there are contributions from another party.

2.3.2 Allocating funding between high priority projects

Legacy mines identified as presenting immediate risks to public safety or serious environmental harm should be prioritised for works. However, there are many sites which fit into this category and the LMP does not have sufficient funds to remediate all of these sites in any given year.

Due to the magnitude of the task, the nature of the issues being addressed and limited funding, it is unrealistic to simply list projects in order of public and environmental risk and progressively work through them. Accordingly, the LMP considers where the most value and community benefit can be obtained through the expenditure of funds.

Where projects have been identified as high priority, the decision on whether or not to allocate funds towards them should consider the following factors:

- Cost effectiveness

- Sustainability (i.e. will not require ongoing contributions to management, being cared for by a public authority, community interest group or individual)
- Likelihood of effectiveness (i.e. proven technologies or methods should be utilised over unproven or experimental methods)
- Deliverability in terms of budget and timing constrains (including potential for delays and cost variations)
- Availability of forfeited security funds or third-party funding.

Other relevant considerations include;

- Impacts associated with the works themselves and whether these outweigh the benefits
- The potential for the site to recover or reach an acceptable state through natural processes if offsite environmental impacts and safety risks are manageable in the short term
- Whether materials on a site that require remediation/rehabilitation constitute an economic resource and requirements of any titleholders on site

All LMP works should aim to reduce legacy mining risks to the State of NSW – that is, reduce the risk profile at each site. However, it must be acknowledged that for some of the ‘extreme’ risk sites, the risk profile may not be reduced after spending significant program funds. Some individual extreme risk sites may require expenditure of tens of millions in order to reduce the risk profile, which cannot currently be accommodated within the LMP budget.

The reasons for allocating funding to projects and the decision to defer funding to other high priority projects are documented as part of the steering committee decision-making process.

The entire process of risk assessment and allocation of funding to sites is overseen by the Legacy Mines Program Steering Committee (LMPSC) and managed in the LMPDB.

References

The following internal and external references informed the content of this business rule.

- LMP Policy
- LMPSC Terms of Reference
- LMP Screening Level Risk Assessment Process Guideline

Appendix A – Private Property Statement of Practice

Generally, the purchase of land is subject to the principle *caveat emptor*, or ‘let the buyer beware’, meaning the owner of the land assumes the risks associated with an operating or derelict mine on or near their land. Works to rehabilitate mines or their impacts on private land have the potential to significantly improve the value of the property.

Public funds may be expended on private land in circumstances where:

- There is a clear and justifiable public benefit
- The Minister directs the Program to do works or investigations.

Matters that should be considered before the Program spends funds on private land include:

- Are there clear public benefits from completing the works?
- Did the landowner become the owner of the land prior to the commencement of mining or any mining related impacts became apparent?
- Are the works required beyond the technical and/or financial means of the landholder?
- Are there higher priority projects presenting immediate risks to the public or environment?

When was the property purchased or transferred?

Land impacted by historic mining operations prior to the purchase or transfer of the land, with foreseeable impacts at the time of purchase, will generally not qualify for LMP funding. Regardless of the need for works being apparent at the time of purchase, projects benefiting properties purchased/transferred after 1st January 2001 will generally not be considered unless there is a significant monetary or in-kind contribution from the landholder towards carrying out the works.

Financial hardship?

Where there is no clear public benefit, works may be carried out on private land if the landholder can demonstrate sustained financial hardship and the exhaustion of all other potential funding sources. A retired pensioner may satisfy the definition of financial hardship, however a landholder experiencing temporary financial hardship due to unemployment, drought or illness is unlikely to meet these requirements, particularly if the residual value of the property is significant.

Higher Priorities?

LMP funding limitations mean that even if financial hardship is satisfied and the owner could not have reasonably been aware of the impacts prior to purchase, other projects may be considered a better use of LMP funds.

Lower priority projects may be considered for funding if there are monetary or in-kind contributions. Partial funding of such projects will depend on consideration of the public benefits delivered by the project. Relevant factors to consider are:

- Is the availability of external funds time limited (i.e. will the offer of funds be available in the future or is it time bound?)
- Does the availability of funds represent an opportunity to provide significant and lasting public benefit not otherwise possible?

Safety issues on private land are the responsibility of the landholder and are generally not funded by the LMP due to the difficulty in providing clear public benefit.

Document history and approval

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