



Environmental Defenders Office

30 April 2021

NSW Resources Regulator

By email: rr.feedback@planning.nsw.gov.au

Dear Resources Regulator,

Public consultation - operational rehabilitation reforms

Thank you for the opportunity to comment on the draft guidelines that have been developed to support the proposed *Mining Amendment (Standard Conditions of Mining Leases - Rehabilitation) Regulation 2020* (**Proposed Regulation**) and associated requirements.

EDO made a submission to the Proposed Regulation and notes the summary of responses to submission provided on the Resources Regulator website.¹ While we appreciate the intention to provide further clarity around certain issues in finalising the Proposed Regulation, we are disappointed that the Resources Regulator has chosen not to adopt stricter requirements for rehabilitation in the Proposed Regulation and is further delaying consideration of final voids and care and maintenance policies.

In responding to the current public consultation on operational rehabilitation reforms, we have chosen to limit our comments to *Guideline 5: Rehabilitation Objectives and Rehabilitation Completion Criteria* (**Guideline 5**).² We particularly note the intention in Guideline 5 (p 9) that the examples provided in the Guideline may be used as the minimum benchmark for Rehabilitation Objectives and Rehabilitation Completion Criteria and provide our comments in that context.

We have not commented on individual metrics in Tables 1 and 2 which detail the Rehabilitation Objectives, Rehabilitation Completion Criteria and Indicators which are proposed to be used as minimum benchmarks. Rather, we have identified a number of principles that should be applied to all metrics and have not been met in the draft Guideline 5. We also note concerns with two of the definitions provided in the Glossary.

Glossary

The Glossary defines 'Active' as "*In the context of rehabilitation, land associated with mining domains is considered 'active' for the period following disturbance until the commencement of*

¹ As detailed at <https://www.resourcesregulator.nsw.gov.au/about-us/have-your-say/operational-rehabilitation-reforms>.

² Available at: https://www.resourcesregulator.nsw.gov.au/__data/assets/pdf_file/0004/1296760/Guideline-5-Rehabilitation-objectives-and-rehabilitation-completion-criteria.pdf.

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rehabilitation". In the absence of clear guidelines on mines entering care and maintenance, this definition is highly problematic. It effectively defines an area as 'active' and therefore potentially not requiring progressive rehabilitation, until the lease holder decides to start rehabilitation. There have been many examples in recent years of mine rehabilitation being delayed indefinitely and allowing an 'active' mine area to be any area where rehabilitation has not commenced. The lack of clear definition risks enhancing this problem.

The definition of 'Active mining phase of rehabilitation' should not include activities such as land clearing. Land clearing is clearly not rehabilitation and the activities included in this definition should be limited to those that will contribute to later rehabilitation – for example seed clearing and hollow retention.

Principle 1: Clear timeframes are required

The Rehabilitation Completion Criteria lack a clear timeframe over which the criteria must be met. For example, criteria relating to landform stability do not specify at which point in time there should be evidence of no active gully erosion. Where there is a reference to a justification/validation method being applied over a period of time (e.g. stability will need to be evaluated over a number of years (e.g. 5 years)) the timeframes are insufficient to ensure that the Rehabilitation Objective of stability in the long-term is met. This Rehabilitation Completion Criteria could only be considered to have been met after the landform has been exposed to a range of environmental conditions over an extended period of time. Without that requirement, a point in time assessment cannot demonstrate that the Rehabilitation Objective, in this example, that the final landform is stable and does not present a risk of environmental harm downstream of the site or a safety risk to the public/stock/native fauna, has been met.

Principle 2: Appropriate monitoring criteria are required

There are a number of Indicators that will require monitoring over decades, if not hundreds of years, to ensure they are successful. Despite this, there are no Indicators relating to the establishment of appropriate monitoring points to ensure rehabilitation requirements are being met on an ongoing basis. For example, the groundwater justification/validation method refers to monitoring over 5 to 15 years despite the fact that many mine environmental assessments identify that it will take hundreds to thousands of years for groundwater to reach a new stable equilibrium post mining. Equally, an appropriate vegetation structure, or even a trend towards that structure, and ecosystem function cannot be determined in 5-15 years. Rehabilitation Completion Criteria must clearly specify the minimum requirements for long-term monitoring.

Principle 3: Objective, rather than subjective, Rehabilitation Completion Criteria are required

The Water Quality objectives for small mines proposes a Rehabilitation Completion Criteria of "Runoff water quality from rehabilitation areas represents an **acceptable** level of change from a defined reference condition" (emphasis added). The Rehabilitation Objective for both large and small mines refers to "Runoff water quality is **similar to**, or better than, the pre-disturbance runoff water quality". Neither the Rehabilitation Objective or the Rehabilitation Completion Criteria can

be objectively measured and therefore enforced as a rehabilitation outcome. Rehabilitation Objectives should use language such as ‘equal to, or better than’ to ensure there is a minimum standard for the rehabilitation outcome.

Further, a number of Indicators are proposing to accept “*formal acceptance from landowner*” as the only evidence required to demonstrate that the benchmark has been achieved, for example the criteria that “*Infrastructure is in a condition (e.g. structural, electrical, other hazards) that is suitable for the intended final land use*”. While this may be a useful validation method in some cases, it is not appropriate to have it as the only validation method for an Indicator. There are many reasons a subsequent landholder may validate a criterion that wouldn’t be acceptable under an objective test. This method of justification/validation should only be used in conjunction with another objective method.

Principle 4: Rehabilitation Completion Criteria must directly demonstrate that the Rehabilitation Objective has been met

There must be a direct link between justification/validation method, the Rehabilitation Completion Criteria and the Rehabilitation Objective. There are currently a number of Rehabilitation Completion Criteria that will not demonstrate that the Rehabilitation Objective has been met. For example, the range of Rehabilitation Completion Criteria for native revegetation for small mines does not include a reference to a requirement for at least one successful germination and establishment event, something which is fundamental to ensuring a self-sustaining ecosystem.

Principle 5: Standard of Rehabilitation Objectives should not be dependent on mine size

We recognise that the Resources Regulator is attempting to make the rehabilitation requirements proportionate to the size of the mine by having different rehabilitation metrics for large and small mines. However, this approach should not be used in a way that compromises long term environmental outcomes. As we have seen from the thousands of legacy mines already creating significant pollution problems in NSW, the size of the mine does not have to be large for the legacy environmental problems to be large. There must be minimum environmental standards applied to all mines regardless of size.

If you would like to discuss this submission further, please contact the author by email:

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Yours sincerely,

Environmental Defenders Office

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