



**NSW
Resources
Regulator**

GUIDELINE

ACHIEVING REHABILITATION COMPLETION (SIGN-OFF)



Document control

Published by NSW Resources Regulator

Title: Guideline: Achieving rehabilitation completion (sign-off)

First published: 02 July 2021

Authorised by: Director Compliance

CM9 reference: DOC21/464549

AMENDMENT SCHEDULE

Date	Version	Amendment
02 July 2021	1	First published

© State of New South Wales through Regional NSW 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2021) and may not be accurate, current or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Contents

Purpose of this guideline	3
Regulatory requirements for rehabilitation	3
Requirements under the <i>Mining Act 1992</i>	3
Regulatory requirements – other legislation	5
Relationship between development consent and mining lease requirements for a rehabilitation management plan	6
Role of the lease holder	6
Our role	7
Achieving rehabilitation completion	9
Step 1: Undertake a rehabilitation risk assessment	10
Step 2: Establish and finalise rehabilitation outcome documents	10
Step 3: Prepare and implement the rehabilitation management plan (large mines only)	11
Step 4: Develop a forward program for rehabilitation activities.....	12
Step 5: Implement rehabilitation, monitor progress and actively manage.....	12
Step 6: Demonstrate achievement of final land use (rehabilitation completion).....	13
Our assessment process	15
Other considerations	16
Changes to final land use	16
Ongoing rehabilitation obligations under the Mining Act 1992	17
Glossary.....	19
Department guidance	23

Purpose of this guideline

The purpose of this guideline is to assist lease holders to identify, track and verify achievement of regulatory obligations under the *Mining Act 1992* to achieve rehabilitation completion progressively and before mining lease relinquishment.

Regulatory requirements for rehabilitation

Requirements under the *Mining Act 1992*

In accordance with the provisions of the *Mining Act 1992* and the conditions of a mining lease, the lease holder is required, amongst other things, to:

- undertake progressive rehabilitation as soon as reasonably practicable after disturbance occurs and over the life of the mine
- ensure that rehabilitation of the mining area achieves the final land use. The final land use for the mining area comprises the final landform and land use(s) to be achieved for the mining area as set out in the following 'rehabilitation outcome documents'¹:
 - rehabilitation objectives statement - which describes the rehabilitation outcomes required to attain the final land use for the mining area
 - rehabilitation completion criteria statement - which expands on rehabilitation objectives to define the key criteria, and 'benchmark values' for each criterion to be achieved, the attainment of which will demonstrate rehabilitation has been achieved
 - final landform and rehabilitation plan (for large mines only) - which spatially depicts the final land use, the final landform topography and the location of rehabilitation features.
- prepare and submit a forward program which includes how rehabilitation will occur as soon as reasonably practicable after disturbance over the next three-year period
- prepare and submit an annual rehabilitation report demonstrating progress made towards achieving:

¹ Refer to clauses 6 and 12 in Schedule 8A of the Mining Regulation 2016.

- the objectives set out in the rehabilitation objectives statement
- the criteria set out in the rehabilitation completion criteria statement
- the final land use as spatially depicted in the final landform and rehabilitation plan (large mines only).

The rehabilitation objectives, rehabilitation completion criteria and, for large mines, the final landform and rehabilitation plan are required to be developed in the form and way² stipulated by the Secretary.

Rehabilitation completion

Rehabilitation areas may be classified as complete when we have determined in writing that rehabilitation has achieved the final land use following submission of the relevant application by the lease holder.

We encourage lease holders to apply for rehabilitation completion progressively when portions of the mining area have achieved the final land use. This will facilitate the lease holder's demonstration of successful progressive rehabilitation 'as soon as reasonably practicable' as required by clause 5 in Schedule 8A of the Mining Regulation 2016. It may also result in partial return of the security deposit.

Once rehabilitation has achieved the final land use, lease holders should:

- lodge a rehabilitation completion application with us to seek written confirmation that all rehabilitation obligations under the *Mining Act 1992* and the conditions of the mining lease have been fulfilled (i.e. rehabilitation completion and 'sign-off'). This may include completion of rehabilitation within a particular area of land within the mining lease or completion of rehabilitation across the entire mining lease area.
- apply to us for a review of the security deposit held by the Department. This may include partial return of the security deposit following completion of rehabilitation within a particular area of land within the mining lease area. Alternatively, it may include full return of security following completion of rehabilitation across the entire mining lease area
- apply to the Department for relinquishment of the mining lease and return of the security deposit (which may include partial or full relinquishment).

² Lease holders should refer to (as relevant):

Form and way: Rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan for large mines, or, Form and way: Rehabilitation objectives and rehabilitation completion criteria for small mines

The 'Achieving rehabilitation acceptance' section below provides further advices on these requirements at each step of the process.

Regulatory requirements – other legislation

Lease holders are responsible for complying with the conditions of any other approval related to rehabilitation. These may include:

- the conditions of a development consent granted under the *Environmental Planning and Assessment Act 1979*
- an environment protection licence under the *Protection of the Environment Operations Act 1997* regulating noise, air, water and waste
- an Aboriginal heritage impact permit under the *National Parks and Wildlife Act 1974*
- licences or approvals under the *Water Management Act 2000* or the *Water Act 1912*, for activities or works that take, divert or use water
- approvals under the *Heritage Act 1977* for the management of heritage items associated with an operation
- approvals for actions likely to have a significant impact on a matter of national environmental significance under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Lease holders are required to consult directly with government agencies responsible for compliance with the other legislation described above. Lease holders should consider incorporating regulatory requirements under other legislation that are directly or indirectly associated with rehabilitation outcomes.

It is the lease holder's responsibility to ensure that any rehabilitation objectives, rehabilitation completion criteria, and the final landform and rehabilitation plan (large mines only) are consistent with the conditions of the development consent and other approvals or licences. Acceptance of achievement of these rehabilitation outcomes by the Secretary does not mean that rehabilitation obligations under other legislation can be considered to be satisfied.

Relationship between development consent and mining lease requirements for a rehabilitation management plan

The rehabilitation objectives and the final land use, which includes the final landforms and rehabilitation requirements, are often approved as part of the development consent. Furthermore, state significant development consents³, (and some local development consents) typically require the preparation and implementation of a rehabilitation management plan. Lease holders should be aware that the relevant consent authority (not the Resources Regulator) regulates the implementation of these rehabilitation management plans in accordance with the conditions of the development consent and relevant requirements of the *Environmental Planning and Assessment Act 1979*. The lease holder will need to ensure that rehabilitation of the mining lease area is consistent with these requirements of the development consent⁴.

The rehabilitation management plan (for large mines only) that is required to be prepared and implemented under the condition of a mining lease⁵, must be prepared in the form and way⁶ required by the Secretary. It must address and include any specific requirements outlined in the relevant condition(s) of the development consent, including specific requirements for the final land use, rehabilitation objectives and rehabilitation completion criteria.

Role of the lease holder

Lease holders should consider the information in this guideline to understand the process to achieve rehabilitation acceptance, mining lease relinquishment and the return of the security deposit.

This process should be considered throughout all phases of mining and not restricted to the final mine closure phase. This should be done progressively when portions of the rehabilitated mining area have met the approved rehabilitation outcomes.

In summary, lease holders are required to:

³ The government has identified certain types of development as state significant development (SSD). Schedules 1 and 2 of *State Environmental Planning Policy (State and Regional Development) 2011* provides a full list of SSD types and identified sites. Large mining and extraction operations (including all coal mines) are identified as SSD.

⁴ The Resources Regulator expects that any rehabilitation requirements approved in the development consent would be included in the rehabilitation outcome documents and the annual rehabilitation report and forward program required under the *Mining Act 1992*.

⁵ Lease holders of large mines are required to prepare and implement a rehabilitation management plan, however, this plan is not required to be submitted to the Resources Regulator for approval.

⁶ Lease holders should refer to *Form and way: Rehabilitation management plan for large mines*.

- develop and seek approval of rehabilitation objectives, rehabilitation completion criteria and, for large mines, a final landform and rehabilitation plan
- develop and implement a rehabilitation management plan (for large mines only) that manages risks to rehabilitation and sets out the approach for how rehabilitation obligations are fulfilled
- provide and maintain a security deposit to secure funding for the fulfillment of rehabilitation obligations
- develop and implement a forward program that provides a schedule of mining activities and the spatial progression of rehabilitation activities for the next three years (which demonstrates rehabilitation is occurring as soon as reasonably practicable following disturbance)
- undertake progressive rehabilitation over the life of the mine and submit an annual rehabilitation report and forward program to us demonstrating how rehabilitation is progressing against the approved performance measures and timeframes
- achieve the approved rehabilitation objectives
- achieve the approved rehabilitation completion criteria
- implement the final landform and final land use(s)
- lodge a rehabilitation completion application and seek written confirmation from us that all rehabilitation obligations under the *Mining Act 1992*, and the conditions of the mining lease, have been fulfilled (i.e. rehabilitation acceptance)
- apply to us for a review of the security deposit held by the Department and the return of the security deposit (including partial return following progressive rehabilitation)
- apply to the Mining, Exploration and Geoscience group (MEG) within the Department for relinquishment of the mining lease and full return of the security deposit.

The sections below set out the requirements for rehabilitation under legislation and how lease holders achieve rehabilitation acceptance as part of this process.

Our role

We are responsible for regulating rehabilitation under the *Mining Act 1992* and the conditions of the relevant mining lease. This includes:

- reviewing and approving rehabilitation objectives, rehabilitation completion criteria and, for large mines, a final landform and rehabilitation plan
- ensuring lease holders develop and implement a rehabilitation management plan (for large mines only) that manages risks to rehabilitation and progressively rehabilitates the impacts of mining operations through the life of the mine
- determining the amount of the security deposit required to be held by government to secure funding for the fulfillment of rehabilitation obligations. This includes regular reviews of the security required as mining operations and rehabilitation progress over the life of mine cycle
- ensuring lease holders provide and maintain a security deposit
- ensuring rehabilitation is carried out progressively, that is, as soon as reasonably practicable following disturbance
- assessing annual rehabilitation reports and forward programs to ensure rehabilitation is progressing against the approved performance measures and in accordance with approved timeframes
- ensuring rehabilitation meets the approved rehabilitation objectives and achieves the approved rehabilitation completion criteria
- ensuring rehabilitation activities implement the approved final landform and final land use(s)
- monitoring and enforcing rehabilitation activities to ensure that the mining area is left in a safe and stable condition
- determining whether all rehabilitation obligations under the *Mining Act 1992* and the conditions of the mining lease have been fulfilled
- determining whether the associated security deposit is adequate, including whether the security deposit (or part thereof) can be returned (where relevant) following the completion of progressive rehabilitation or at the completion of rehabilitation activities as part of mining lease relinquishment.

We will regularly assess the adequacy of a lease holder's records to demonstrate all mining lease conditions are met, including records to verify that rehabilitation obligations are understood by the lease holder, and appropriate rehabilitation planning, implementation and monitoring activities are being undertaken throughout the life of mine to achieve the approved rehabilitation outcomes.

Achieving rehabilitation completion

Rehabilitation areas may be classified as complete when we have determined in writing that rehabilitation has achieved the final land use following submission of the relevant application by the lease holder.

We encourage lease holders to apply for rehabilitation completion progressively when portions of the mining area have achieved the final land use. This will facilitate the lease holder's demonstration of successful progressive rehabilitation 'as soon as reasonably practicable' as required by clause 5 in Schedule 8A of the Mining Regulation 2016. It may also result in partial return of the security deposit.

Once rehabilitation has achieved the final land use, lease holders should:

- lodge a rehabilitation completion application with us to seek written confirmation that all rehabilitation obligations under the *Mining Act 1992* and the conditions of the mining lease have been fulfilled (i.e. rehabilitation completion and 'sign-off'). This may include completion of rehabilitation within a particular area of land within the mining lease or completion of rehabilitation across the entire mining lease area.
- apply to us for a review of the security deposit held by the Department. This may include partial return of the security deposit following completion of rehabilitation within a particular area of land within the mining lease area. Alternatively, it may include full return of security following completion of rehabilitation across the entire mining lease area
- apply to the Department for relinquishment of the mining lease and return of the security deposit (which may include partial or full relinquishment).

Land for which rehabilitation has been accepted does not necessitate the need to have the corresponding land relinquished from the mining lease. However, acceptance of rehabilitation completion is a pre-requisite for mining lease relinquishment.

Lease holders should follow the following steps to achieve rehabilitation completion:

1. undertake a rehabilitation risk assessment
2. establish and finalise the rehabilitation outcome documents
3. prepare and implement the rehabilitation management plan (large mines only)
4. develop a forward program for rehabilitation activities
5. implement rehabilitation, monitor progress and actively manage
6. demonstrate achievement of final land use.

Step 1: Undertake a rehabilitation risk assessment

Lease holders are required to conduct a rehabilitation risk assessment before preparing rehabilitation outcome documents and the rehabilitation management plan (large mines only). Further information is provided in *Guideline: Rehabilitation risk assessment*.

The rehabilitation risk assessment must be kept as a record on site and is not required to be submitted to us. It must identify, assess and evaluate the risks that need to be addressed to achieve:

- the rehabilitation objectives and rehabilitation completion criteria
- the final land use as spatially depicted in the final landform and rehabilitation plan (large mines only).

The lease holder is required to implement the control measures identified in the risk assessment to eliminate, minimise or mitigate the risks.

The risk and risk control measures identified in the rehabilitation risk assessment must also be:

- factored into the rehabilitation planning and management for the mining area
- incorporated into the rehabilitation management plan (large mines only)
- factored into the development of rehabilitation outcome documents outlined in Step 2.

Lease holders should refer to *Guideline: Rehabilitation controls* to assist in identifying and evaluating the site-specific rehabilitation processes, controls and techniques to be considered for inclusion in a rehabilitation risk assessment.

Step 2: Establish and finalise rehabilitation outcome documents

Lease holders must develop, and submit to us for approval, rehabilitation objectives and a final landform and rehabilitation plan (large mines only). These are required to be prepared in the form and way⁷ stipulated by the Secretary and submitted for approval in accordance with triggers and timeframes stipulated in Schedule 8A of the Mining Regulation 2016.

⁷ Lease holders should refer to (as relevant) *Form and way: Rehabilitation objectives and rehabilitation completion criteria for small mines* or *Form and way: Rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan for large mines*.

Lease holders must also develop rehabilitation completion criteria in the form and way stipulated by the Secretary. Final versions of the rehabilitation completion criteria are to be submitted to us for approval not less than three years before the intended date to apply for rehabilitation acceptance for that area of the mining area⁸. Rehabilitation completion criteria set the 'benchmark values' for key attributes (indicators) proposed to demonstrate that the rehabilitation objectives have been met (refer to *Guideline: Rehabilitation objectives and rehabilitation completion criteria*).

Rehabilitation completion criteria that have not been approved by us are considered to be preliminary only and are to be included as part of the published rehabilitation management plan. The ongoing refinement of rehabilitation completion criteria will need to be developed based on the implementation of sound rehabilitation practices, outcomes of rehabilitation monitoring and research as well as in consideration of feedback from stakeholders (e.g. government agencies and landholders) before being submitted for approval.

Lease holders must also take into account the spatial data formatting requirements required for the submission of the final landform and rehabilitation plan (large mines only). The final landform and rehabilitation plan is to be submitted to us via the mine rehabilitation portal (refer to *Guideline: Mine rehabilitation portal*).

Step 3: Prepare and implement the rehabilitation management plan (large mines only)

Lease holders of large mines are required to prepare, implement and keep up to date a rehabilitation management plan. The rehabilitation management plan is to be prepared in accordance with the form and way stipulated by the Secretary⁹. The rehabilitation outcomes are required to be incorporated into the rehabilitation management plan and published (e.g. on a mining company's webpage).

As part of this process, lease holders will also be required to review the rehabilitation risk assessment to identify and manage risks associated with achieving the rehabilitation outcomes. The rehabilitation management plan must also incorporate any changes to risk controls to be implemented to achieve the rehabilitation outcomes.

The rehabilitation outcomes and the rehabilitation management plan can be refined and amended in accordance the processes outlined in the Mining Regulation 2016. As previously stated, final rehabilitation completion criteria are to be submitted to us for approval not less than three years before the intended date to apply for rehabilitation acceptance for that area of the mining area.

⁸ Clause 15(3) of Schedule 8A of the Mining Regulation 2016.

⁹ Refer to *Form and way: Rehabilitation management plan for large mines*.

Step 4: Develop a forward program for rehabilitation activities

Lease holders are required to prepare and submit an annual rehabilitation report and forward program in the form and way¹⁰ required by the Secretary.

This report includes information on rehabilitation activities undertaken during the nominated annual report period, as well as a forward program for surface disturbance activities and rehabilitation activities to be undertaken over a three-year forecast period. This includes undertaking ongoing monitoring, maintenance and corrective actions to existing rehabilitation areas to ensure that they remain on a trajectory of achieving the rehabilitation outcomes as soon as reasonably practicable.

Lease holders are required to rehabilitate the mining area that is disturbed by activities under the mining lease in accordance with the three-year forecast set out in the forward program.

As part of this process, lease holders are required to consider rehabilitation research, trials and other relevant studies that will be carried out in the three-year forecast period (where applicable) to address knowledge gaps identified in the rehabilitation risk assessment.

Step 5: Implement rehabilitation, monitor progress and actively manage

In accordance with the conditions of a mining lease, lease holders must rehabilitate land in the mining area as soon as reasonably practicable after disturbance occurs. This requires rehabilitation activities to be undertaken progressively and in accordance with:

- the rehabilitation management plan (large mines only)
- the three-year forecast set out in the forward program.

A rehabilitation monitoring program is required to be developed and implemented to evaluate the progress of rehabilitation towards fulfilling rehabilitation objectives and rehabilitation completion criteria (including any baseline monitoring at analogue sites). *Guideline: Rehabilitation controls* provides further guidance on how lease holders set up a rehabilitation monitoring program. The rehabilitation monitoring program must be detailed in the rehabilitation management plan (large mines only).

¹⁰ Lease holders should refer to the following documents, as relevant:

- *Form and way: Annual rehabilitation report and forward program for small mines*
- *Form and way: Annual rehabilitation report and forward program for large mines.*

Rehabilitation monitoring should be implemented early to establish records that will facilitate assessment of the effectiveness of rehabilitation methodologies. Monitoring parameters in the rehabilitation monitoring program must be aligned to the rehabilitation completion criteria, specifically the performance indices.

Rehabilitation monitoring must be reported in the annual rehabilitation report and forward program in the form and way stipulated by the Secretary.

Rehabilitation monitoring will determine the effectiveness of rehabilitation risk controls and if there are any emerging risks, including a risk of rehabilitation failure requiring early intervention. The outcomes of the rehabilitation monitoring program should be used to develop any necessary management actions for rehabilitation areas (e.g. weed control, feral animal control, erosion control, re-seeding and or plant etc.) to ensure that the rehabilitation outcomes are achieved as soon as reasonably practicable.

Step 6: Demonstrate achievement of final land use (rehabilitation completion)

The lease holder must demonstrate (with records) that they have achieved the final land use for the mining area prior to applying for rehabilitation completion. In summary, the lease holder must demonstrate that:

- they have met the approved rehabilitation objectives
- they have achieved the approved rehabilitation completion criteria
- they have implemented the final landform and final land use(s).

As part of this process, the lease holder should demonstrate the following (as relevant):

- the mining area, subject to the application, is clearly defined in accordance with the Department's requirement for spatial data submission (refer to *Guideline: Mine rehabilitation portal*).
- rehabilitation records have been maintained of all rehabilitation actions taken in accordance with the Mining Regulation 2016¹¹ (refer *Guideline: Rehabilitation records*).

¹¹ Clause 17 of Schedule 8A of the Mining Regulation 2016 requires records to be created and maintained of all rehabilitation actions. Sections 163D and 163E of the *Mining Act 1992* provide for the form in which records must be kept and the period for which they must be retained.

- all monitoring required under the *Mining Act 1992* has been completed and no further ongoing monitoring is required (e.g. subsidence, water or ecological monitoring).
- consultation has been undertaken with relevant government agencies and any regulatory requirements under other legislation have been satisfied (refer to section above “Regulator requirements – other legislation”). This may include but not necessarily be limited to the following:
 - consultation with and written confirmation from the relevant development consent authority confirming there are no outstanding rehabilitation obligations / commitments under the development consent
 - consultation with and written confirmation from from the NSW Environment Protection Authority (for large mines) that all relevant obligations under an environment protection licence (EPL) can/have been met or the EPL has/will be surrendered
 - consultation with Dam Safety NSW where the land includes a declared dam under the *Dam Safety Act 2015* - which may involve an application to remove a dam or tailings dam from the list of declared dams following rehabilitation
 - consultation with and written confirmation from the relevant water regulator (e.g. Water NSW, Natural Resources Access Regulator) that any obligations under water licences / approvals have been met
 - consultation with and written confirmation from the relevant government Department(s) regarding matters relevant to the mining lease area relating to Aboriginal heritage impact permits, biobanking agreements, biodiversity offsets, heritage permits, plant / species licences, etc
 - consultation with and documented acceptance from relevant utility companies regarding the decommissioning and removal or retention of utilities or infrastructure within the mining lease including electricity, water, gas, telecommunication and rail services
 - consultation with and written confirmation from the Commonwealth Department of Agriculture, Water and the Environment that obligations relevant to the mining lease area have been met under any relevant approvals granted pursuant to the *Environment Protection and Biodiversity Conservation Act 1999*.

- notification of closure of the mine site has occurred in accordance with clause 129(1)(f) of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014. Notification under this clause must be given by the mine operator not later than one month before closure.
- consultation has occurred with the landholder and the landholder is satisfied with the completed rehabilitation. While not mandatory, landholder satisfaction with completed rehabilitation may assist our assessment.
- consultation has been undertaken with other relevant stakeholders, such as the local Aboriginal land council and any community consultative committee established under the requirements of the development consent.

Lease holders are required to formally apply to us for rehabilitation completion using the relevant application form. The application form is available on our website and provides further guidance as to the type and format of information that is required to support an application to us. The extent of the mining area for which the application applies is required to be in a spatial data format in accordance with our spatial data formatting requirements and submitted to the mine rehabilitation portal (refer to *Guideline: Mine rehabilitation portal*).

As part of this process, the lease holder will also have an opportunity to revise the rehabilitation cost estimate for the mining lease, taking into account the completed rehabilitation. The estimate will then be considered by the Department when determining the security deposit amount. This may include partial return of the security deposit following completion of rehabilitation within a particular area of land within the mining lease area. Alternatively, it may include full return of security following completion of rehabilitation across the entire mining lease area.

Our assessment process

We will review all the information provided in the application by the lease holder (step 6 above) to determine whether the final land use has been achieved. This will include a review of relevant records and monitoring data and on the ground rehabilitation verification inspections.

We have established an internal review panel known as the Rehabilitation and Securities Panel (RASP) to review and determine applications from lease holders for rehabilitation acceptance. RASP is made up of senior staff within the Resources Regulator.

Complex rehabilitation matters may also be referred to other relevant agencies for advice as to whether rehabilitation obligations have been fulfilled. We will consider this advice as part of its determination of the application.

Where we determine that the rehabilitation outcomes have not been satisfied, a written response will be provided to the lease holder providing the reasons for this decision and the specific issues that are required to be addressed. This may include the issuing of directions under section 240 of the *Mining Act 1992*. We may retain and/or vary the security deposit should the rehabilitation obligations not yet be fulfilled. The amount of security deposit may continue to be held beyond the time when the mining lease expires or is cancelled.

Where it is determined that the rehabilitation outcomes have been satisfied and all rehabilitation obligations under the *Mining Act 1992* have been met, we will:

- provide written notification to the lease holder
- undertake an assessment of the security deposit to determine whether the security deposit is adequate, including whether the security deposit (or part thereof) can be returned¹².

Once the mining area has been assessed as achieving the final land use, lease holders will still be required to submit spatial data identifying the part of the mining area for which rehabilitation has been accepted as complete. Spatial data is required to be submitted via the mine rehabilitation portal (refer to *Guideline: Mine rehabilitation portal*). This process is progressive throughout the mine life (e.g. progressive completion of rehabilitation is captured as part of the reporting requirements in the annual rehabilitation report and forward program until the entire mining lease area has been rehabilitated).

The lease holder can proceed at any time to request formal relinquishment of the mining lease over the subject area. This request can apply to part of the mining lease area (e.g. limited to part of the mining area for which rehabilitation is accepted as completed by us). The mining lease relinquishment process is administered by Mining, Exploration and Geoscience (MEG) with the Department through a separate application, which involves consultation with the Resources Regulator. Alternatively, lease holders can retain the mining lease and decide to process the mining lease relinquishment later.

Lease holders should note that even if rehabilitation acceptance (sign-off) has been obtained from us, they are still required to comply with all relevant requirements of the *Mining Act 1992* and the conditions of the mining lease until the mining lease has been relinquished.

Other considerations

Changes to final land use

¹² The Resources Regulator will notify Mining, Exploration and Geoscience within the Department of any changes to the security deposit required. This may trigger a change to the security deposit condition on the mining lease.

The final land use comprises the final landform and the final land use(s) to be achieved for the mining area. The final land use(s) are often approved as part of the development consent.

In circumstances where the final land use is not defined in the development consent, lease holders are required to undertake a final land use options assessment. The options assessment process is outlined in the *Form and way: Rehabilitation management plan for large mines*.

In some circumstances, lease holders may decide that a change to the approved final land use may be appropriate. Changes should be considered in the context of beneficial use of the land rather than unachievable rehabilitation and final land use outcomes. Examples include residential development, renewable energy infrastructure (e.g. pumped hydro and solar farms) or other non-rural land uses. In some circumstances, the retention of infrastructure (e.g. workshop buildings) for ongoing use post-closure may require a change to the final land use.

Any changes to the approved final land use will require either a new development consent or a modification to an existing consent from the relevant consent authority under the *Environmental Planning and Assessment Act 1979*.

The process of obtaining development consent must be completed prior to the rehabilitation acceptance application process and will require a re-establishment of rehabilitation outcomes. Lease holders will be required to reassess the risks associated with the proposed land use change. For example, a change in land use to accommodate residential development will require a consideration of risks that may not have previously required consideration, such as geotechnical stability of the rehabilitated land to support residential foundations.

Lease holders considering changes to final land use are encouraged to consult early with both us and the relevant consent authority. We will only accept a change to the final land use once there is certainty that the proposed land use is achievable and will be implemented.

Ongoing rehabilitation obligations under the Mining Act 1992

Under the provisions of the *Mining Act 1992*, we can direct lease holders to rehabilitate land that has been affected by activities under the mining lease. These provisions also apply to mining leases that have expired, been cancelled or relinquished.

In the event of failed rehabilitation of land previously accepted as complete, we will undertake an investigation to determine the cause and factors contributing to the failure. We will then determine the appropriate response and if necessary, regulatory action may be taken against the former lease holder based on the circumstances and nature of the issue.

The security deposit may also be held beyond the time when the mining lease expires or is cancelled, should the obligations not yet be fulfilled.

Glossary

TERM	DEFINITION
Annual rehabilitation report	As defined in the Mining Regulation 2016.
Department	Department of Regional NSW.
Disturbance	See Surface Disturbance.
Domain	An area (or areas) of the land that has been disturbed by mining and has a specific operational use (mining domain) or specific final land use (final land use domain). Land within a domain typically has similar geochemical and/or geophysical characteristics and therefore requires specific rehabilitation activities to achieve the associated final land use.
Final landform and rehabilitation plan	As defined in the Mining Regulation 2016.
Final land use	As defined in the Mining Regulation 2016.
Final land use domain	A land management unit with a final land use. A mining lease may have one final land use (e.g. returning the entire mining lease to native vegetation) or several final land use units (e.g. a mix of pasture areas and native ecosystems). Each final land use unit represents a separate final land use domain.
Form and way	Means the form and way approved by the Secretary. Approved form and way documents are available on the Department's website.
Forward program	As defined in the Mining Regulation 2016.
Indicator	An attribute of the biophysical environment (for example, pH, topsoil depth, biomass) that can be used to approximate the progression of a biophysical process. It can be measured and audited to demonstrate (and track) the progress of an aspect of rehabilitation towards a desired completion criterion (defined end point). It may be aligned to an established protocol and used to evaluate changes in a system.
Land	As defined in the <i>Mining Act 1992</i> .

TERM	DEFINITION
Large mine	As defined in the Mining Regulation 2016.
Lease holder	The holder of a mining lease.
Life of mine	The timeframe of how long a mine is approved to mine, from commencement to closure.
MEG	Refers to Mining, Exploration and Geoscience (a division within the Department).
Mine rehabilitation portal	<p>Means the NSW Resources Regulator's online portal that leaseholders must use (via a registered account) to:</p> <ul style="list-style-type: none"> ■ upload rehabilitation geographical information system (GIS) spatial data ■ develop rehabilitation GIS spatial data (using online tracing functions) ■ generate rehabilitation plans and rehabilitation statistics using the map viewer and Rehabilitation Key Performance Indicator functionalities. <p>Data submitted to the mine rehabilitation portal is collated in a centralised geodatabase for use by the NSW Resources Regulator to regulate rehabilitation performance of leaseholders.</p>
Mining area	As defined in the <i>Mining Act 1992</i> .
Mining domain	A land management unit with a discrete operational function (for example, overburden emplacement), and therefore similar geophysical characteristics, that will require specific rehabilitation treatments to achieve the final land use(s).
Mining lease	As defined in the <i>Mining Act 1992</i> .
Mining operations	As defined in the <i>Mining Act 1992</i> .
Phases of rehabilitation	<p>The stages and sequences of actions required to rehabilitate disturbed land to achieve the final land use. The phases of rehabilitation are:</p> <ul style="list-style-type: none"> ■ active mining ■ decommissioning

TERM	DEFINITION
	<ul style="list-style-type: none"> ■ landform establishment ■ growth medium development ■ ecosystem and land use establishment ■ ecosystem and land use development ■ rehabilitation completion (sign-off).
<p>Progressive rehabilitation</p>	<p>The progress of rehabilitation towards achieving the approved or, if not yet approved, the proposed:</p> <ul style="list-style-type: none"> ■ rehabilitation objectives, and ■ rehabilitation completion criteria, and ■ for large mines – final landform and rehabilitation plan. <p>This may be described in terms of domains, phases, performance indicators and rehabilitation completion criteria.</p>
<p>Rehabilitation</p>	<p>As defined in the <i>Mining Act 1992</i>.</p>
<p>Rehabilitation acceptance</p>	<p>Written confirmation from the NSW Resources Regulator that rehabilitation obligations under the Mining Act 1992 have been fulfilled following submission of the relevant application by the lease holder.</p>
<p>Rehabilitation completion</p>	<p>The final phase of rehabilitation when a rehabilitation area has achieved the final land use for the mining area:</p> <ul style="list-style-type: none"> ■ as stated in the approved rehabilitation objectives and the approved rehabilitation completion criteria, and ■ for large mines – as spatially depicted in the approved final landform and rehabilitation plan. <p>Rehabilitation areas may be classified as complete when the NSW Resources Regulator has determined in writing that rehabilitation has achieved the final land use following submission of the relevant application by the lease holder.</p>
<p>Rehabilitation completion criteria</p>	<p>Rehabilitation completion criteria set out the criteria the achievement of which will demonstrate the achievement of the rehabilitation objectives.</p>

TERM	DEFINITION
Rehabilitation cost estimate	As defined in the Mining Regulation 2016.
Rehabilitation management plan	As defined in the Mining Regulation 2016.
Rehabilitation objectives	Means the rehabilitation objectives required to achieve the final land use for the mining area.
Rehabilitation outcomes	Means the final land use for the mining area as stated in the approved rehabilitation objectives, the approved rehabilitation completion criteria and (for large mines only) the approved final landform and rehabilitation plan.
Rehabilitation outcome documents	As defined in the Mining Regulation 2016.
Rehabilitation risk assessment	As defined in the Mining Regulation 2016.
Risk	The effect of uncertainty on objectives. It is measured in terms of consequences and likelihood (AS/NZS ISO 31000:2018).
Secretary	The Secretary of the Department.
Security deposit	As defined in the <i>Mining Act 1992</i> .
Small mine	As defined in the Mining Regulation 2016.
State significant development (SSD)	Has the same meaning as that term under the <i>Environmental Planning and Assessment Act 1979</i> . Note: Schedules 1 and 2 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i> provide a full list of SSD types and identified sites. Large mining and extraction operations (including all coal mines) are identified as SSD.
Surface disturbance	Includes activities that disturb the surface of the mining area, including mining operations, ancillary mining activities and exploration.

Department guidance

- Form and way: Rehabilitation objectives and rehabilitation completion criteria for small mines
- Form and way: Rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan for large mines
- Form and way: Rehabilitation management plan for large mines
- Form and way: Annual rehabilitation report and forward program for small mines
- Form and way: Annual rehabilitation report and forward program for large mines
- Guideline: Rehabilitation risk assessment
- Guideline: Rehabilitation records
- Guideline: Rehabilitation controls
- Guideline: Mine rehabilitation portal
- Guideline: Rehabilitation objectives and rehabilitation completion criteria
- Guideline: Achieving rehabilitation completion (sign-off)

The above resources are located on our [website](#).