

NEW STANDARD REHABILITATION CONDITIONS ON MINING LEASES

Frequently Asked Questions

July 2021

What are the changes?

The NSW Government has introduced new standard rehabilitation and reporting conditions on mining leases to set clear, achievable and enforceable requirements for rehabilitation across mine sites in NSW. The changes introduce regulatory tools and set clear requirements for rehabilitation throughout a mine's life, from the mine design stage through to closure.

The key components are:

1. New standard mining lease conditions for rehabilitation will replace rehabilitation conditions on existing mining leases and will be added to all new mining leases. These require progressive rehabilitation, rehabilitation risk assessment, annual reporting and detailed rehabilitation management planning. The conditions will be implemented through the Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation 2021 (the Regulation), which commenced on 2 July 2021. There is a transitional period in place for existing mining leases.
2. Form and way documents will identify the mandatory requirements for the preparation of rehabilitation management plans, rehabilitation objectives, rehabilitation completion criteria, final landform and rehabilitation plans, annual rehabilitation reports and forward programs.
3. Guidelines on risk assessments, records and rehabilitation controls will help lease holders comply with mining lease conditions.
4. The [mine rehabilitation portal](#) will collect rehabilitation GIS spatial data for large mines. This online portal will help mining companies and the NSW Resources Regulator to accurately record and track areas of disturbance and rehabilitation progress across individual sites.

The changes will improve regulatory mechanisms to ensure that progressive rehabilitation occurs and that sustainable post-mining land use outcomes are achieved.

Why are the changes needed?

Although progressive rehabilitation is already an obligation in mining lease conditions, and increasingly in development consents, there is a need for stronger obligations for progressive rehabilitation of mine sites, starting early in a mine's life cycle.

The changes include strong regulatory tools and set clear requirements for progressive rehabilitation, from the mine design stage through to mine closure and achievement of the final land use. The changes also allow for rehabilitation strategies and measures to demonstrate continuous improvement, as rehabilitation data and capabilities increase over time.

The new conditions will standardise rehabilitation requirements across the mining industry, increase the transparency of rehabilitation planning and progress, improve our ability to monitor how rehabilitation is progressing over time, and increase our ability to take enforcement action against non-compliances.

The changes will also make it easier for lease holders in NSW to comply with rehabilitation obligations on mining leases that have multiple, often complex and outdated conditions. The changes will improve the industry's ability to monitor against, and comply with, their rehabilitation requirements by introducing rigorous and focused rehabilitation conditions on a mining lease.

Introducing the conditions by regulation will ensure that all mining leases have the same rehabilitation conditions across larger mine sites where multiple leases are held. Furthermore, all mines in NSW will have the same rehabilitation conditions, making the operating environment for industry fair and equitable across the state.

How is mine rehabilitation regulated?

Rehabilitation is a critical element of mining operations in NSW. Before mining operations start, development consent is required from the relevant consent authority under the *Environmental Planning and Assessment Act 1979*. The mine design and final land use, which includes the final landforms and rehabilitation requirements, is assessed and approved as part of the development consent.

After a development consent has been issued, a mining lease (which provides the right to mine) may be granted under the *Mining Act 1992*. Rehabilitation conditions consistent with the development consent are attached to all mining leases.

The NSW Resources Regulator is responsible for the regulation of mine rehabilitation under a mining lease.

Why are the mining lease conditions changing?

Mining lease conditions are our main tool for regulating rehabilitation under the *Mining Act 1992*.

Changes to the conditions of mining leases are needed to:

- achieve better quality progressive rehabilitation throughout the life of mining operations
- improve clarity and enforceability for:
 - progressive rehabilitation
 - rehabilitation risk assessment and risk management
 - rehabilitation record keeping.
- improve monitoring and increase the achievement of final rehabilitation outcomes.

One of the main changes is to replace the existing mining operations plan (MOP) with a targeted rehabilitation management plan (RMP) for large mines. The lease holder will provide the annual reporting and scheduling of rehabilitation in an annual rehabilitation report and forward program. This will replace the annual environmental management report.

What happens to mining operation plans?

Until the new conditions apply, lease holders will need to undertake mining operations in accordance with an approved MOP.

When the new conditions apply, there will no longer be a requirement for a MOP, and current MOPs will no longer have effect.

Exploration activity approvals that were granted as part of the MOP that have not been completed, will lapse once the Regulations commence. Further details are provided below in this FAQ.

How do I get approval for exploration activities on a mining lease if the MOP condition is being removed?

Approval to undertake exploration activities on a mining lease was previously required as part of an approval for the mining operations plan (MOP). These approvals were granted following an environmental assessment by the department pursuant to the provisions of Part 5 of the *Environmental Planning and Assessment Act 1979*. As the MOP condition is being removed from mining leases as part of the Regulation, the requirement to obtain approval for exploration will be included as a special condition on the mining lease and is not a standard condition under the Regulation.

You will need to get approval from the department to undertake exploration activities on a mining lease unless:

- the exploration activities are defined as exempt development pursuant to clause 10 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, or
- the exploration activities have already been approved pursuant to a development consent under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In many cases, development consents contemplate that exploration activities ancillary to mining, and directly related to the mining project, will take place (e.g. exploration within the approved disturbance zones to assist define the mining operations). Development consents for underground mining operations may have included exploration on the surface of the land as ancillary operations to the mining project. If exploration is directly related to the mining project (e.g. exploration activities are being carried out help define the approved mining operation), then it is most likely to be ancillary to the approved mining development. Whether or not this is the case will always depend on a careful consideration of the development consent.

Exploration activity approvals that were granted as part of the MOP that have not been completed, will lapse once the Regulations commence. Lease holders should contact the NSW Resources Regulator if they intend to undertake previously approved exploration activities on a mining lease after the expiry of the relevant transition period. The department will work with lease holders to facilitate the completion of these exploration activities using a new approval pathway.

Why is a condition for progressive rehabilitation needed?

One key aim of the changes is to ensure the site is rehabilitated progressively throughout the life of a mine. The Regulation introduces a requirement to rehabilitate land and water as soon as reasonably practicable after disturbance.

Progressive rehabilitation demonstrates that the lease holder is on the trajectory to achieving the final land use. It also reduces the overall liability for rehabilitation works, enables the lease holder to test and improve rehabilitation practices and increases the likelihood of achieving successful and timely rehabilitation outcomes.

Applying the new conditions to all mining leases means there is an explicit obligation to progressively rehabilitate in all NSW mining operations. This is important because older mining leases do not currently have an explicit condition requiring progressive rehabilitation.

We will monitor the mine's progressive rehabilitation annually, verifying progress using the submitted annual rehabilitation report and forward program.

The changes enable us to review whether a lease holder is progressively rehabilitating their mining operations in accordance with the commitments made within the rehabilitation management plan and forward program.

The framework also provides flexibility for mining operations that have been affected by unforeseen circumstances, such as drought, which may cause delays in the planned rehabilitation schedule and/or rehabilitation success. The changes require lease holders to submit a three-year forward program for rehabilitation, which must be updated each year. This will let lease holders adjust their rehabilitation program and methodology, in response to advances in rehabilitation techniques, outcomes from monitoring and trials and unfavourable conditions, as well as address areas that may require follow-up work, such as reseedling or fertilising.

How will the changes be implemented?

Each existing mining lease for a mining operation may have different rehabilitation and environmental management conditions. For consistency, the new conditions have been introduced through amendments to the Mining Regulation 2016, so the new requirements apply to all mining leases. The changes aim to simplify, reform and modernise the existing regulatory approach for mining lease conditions in NSW, which reflects the NSW Government's commitment to good practice regulation. This ensures a transparent and consistent approach for the whole of the NSW mining industry.

When will the new conditions apply?

The Mining Amendment (Standard Conditions of Mining Leases-Rehabilitation) Regulation 2021 commenced on 2 July 2021. The new conditions apply to all new mining leases granted from that date. Transitional arrangements for existing mines are in place to allow time for lease holders to prepare for the new requirements. The conditions and new requirements in the Regulation will apply to all mining leases:

- for existing large mines – 2 July 2022 (12 months from the date the Regulation commenced)
- for small existing mines – 2 July 2023 (24 months from the date the Regulation commenced)
- for any other mining lease granted from 2 July 2021, on the date the lease is granted.

What is the difference between a large mine and a small mine?

Under the changes:

- a large mine is a mine the subject of one or more mining leases, the carrying out of activities under at least one of which require an environment protection licence under the *Protection of the Environment Operations Act 1997*
- a small mine is any mine other than a large mine.

We recognise that rehabilitation activities and the level of rehabilitation planning varies between large and small mine operations and the requirements are intended to be scalable commensurate with the risks. Lease holders of small mines will have an additional 12 months to prepare for the new requirements.

Will a new mining lease instrument be issued for existing mines?

A mining lease under the *Mining Act 1992* is required for all mines in NSW. Like development consents, mining leases are granted subject to conditions which set out obligations on the lease holder in respect of the mine's operation. For older mining leases, the conditions imposed on the lease may be outdated, duplicative or vague. These changes provide an opportunity to remove or update such conditions, and provide industry with a streamlined mining lease, ensuring conditions are consistent across NSW.

Following the commencement of the amended Regulation, the department will review the conditions on every mining lease and remove any conditions that duplicate or are inconsistent with the prescribed conditions in the Regulation. The department will re-issue the streamlined mining lease instruments for approximately 1,000 mining leases. The number of conditions on most mining leases will be reduced substantially as part of the variation process.

What is the variation process?

To create a streamlined instrument, the department will vary existing mining leases through the process outlined by Schedule 1B, Clause 12 of the *Mining Act 1992*.

For each current mining lease in NSW, the department will:

- review the existing conditions and identify those no longer required and any “special conditions” that must remain
- prepare a draft revised instrument
- provide the draft revised instrument to the lease holder and invite them to make a submission to the decision-maker about the proposed variation within a specified deadline of at least 28 days
- consider any submission received and provide a final recommendation to the decision-maker, who would then approve or refuse the proposed variation.

If the decision-maker approves the variation, the department will issue the new, streamlined instrument to the lease holder. The varied conditions will commence on the day that the new conditions in the amended Regulation become effective.

What is ‘form and way’?

The new mining lease conditions require certain documents to be provided in the ‘form and way’ approved by the Secretary. The form and way documents outline the mandatory requirements for the structure, format and content of:

- a rehabilitation management plan (for large mines)
- an annual rehabilitation report and forward program (for large mines)
- an annual rehabilitation report and forward program (for small mines)

- rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan (for large mines)
- rehabilitation objectives, rehabilitation completion criteria (for small mines).

Certain requirements apply to large mines only and form and way documents are specific to either large mines or small mines. This ensures that lease holders provide appropriate levels of rehabilitation information, based on the size and complexity of the operation, as well as the risks to rehabilitation.

Large mines are required to provide more information, proportionate with the higher level of planning required for rehabilitation activities in these mines. Detailed rehabilitation planning information, aligned with spatial information provided through the mine rehabilitation portal, will enable us to monitor the progress of rehabilitation and planning for future rehabilitation activities to achieve the final land use.

Small mines require targeted information to prompt lease holders to consider rehabilitation planning throughout the life cycle of their operations.

Guidance material will be available on the NSW Resources Regulator website to help lease holders to understand their obligations to progressively rehabilitate.

What guidance is available to help comply with the new requirements?

The following new guidelines have been prepared to help industry:

- [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 \(sign-off\)](#)

These guidelines were the subject of consultation with the mining industry in 2018 and 2021 and are published on our website. It is anticipated that additional guidance and fact sheets will continue to be provided to industry to assist with compliance.

What are the risk assessment requirements?

The changes require the lease holder to conduct a rehabilitation risk assessment. The lease holder must identify and evaluate all potential risks to achieving the rehabilitation objectives, rehabilitation completion criteria and, for large mines, a final landform and rehabilitation plan. The lease holder must also identify and implement the specific measures required to eliminate, minimise or mitigate those risks. For all mines, the rehabilitation risk assessment will inform the forward program. For large mines, the results of the rehabilitation risk assessment will also inform the rehabilitation management plan.

If a risk assessment has not been conducted or is found to be lacking, regulatory action will be taken to ensure the risk assessment is amended to identify the risks and the control measures required.

Lease holders are required to ensure the rehabilitation risk assessment is evaluated over the term of the mining lease to ensure the continued effectiveness of the risk control measures.

Lease holders do not need to submit the rehabilitation risk assessment to the Secretary for approval. However, lease holders must keep appropriate records that document the rehabilitation risk assessment, including how it has been reviewed and updated over the life of the operation.

Further details are provided in [Guideline: Rehabilitation risk assessment](#), available on our website.

What is required in a rehabilitation management plan?

A rehabilitation management plan is only required for large mines. A rehabilitation management plan must be prepared in the approved form and way and must include the specific matters outlined in clause 10(1) in Schedule 8A of the Regulation.

The rehabilitation management plan defines the rehabilitation outcomes and sets out the strategy for how they will be achieved. It is anticipated that the rehabilitation management plan will evolve throughout the mine life to mine closure. The level of detail related to achieving the final rehabilitation outcomes will increase based on the lessons learnt from rehabilitation monitoring and trials, detailed studies and assessments of specific rehabilitation features (e.g. final voids, tailings storage facilities), as well as general advances in rehabilitation methodologies and best practices.

The rehabilitation management plan will present the case to government and the community regarding how a lease holder will:

- achieve compliance with the conditions of the mining lease that relate to rehabilitation

- commit to measurable performance outcomes to achieve the final land use, as set out in the rehabilitation objectives and rehabilitation completion criteria
- adopt innovative solutions and best practice techniques to meet performance outcomes and address risks to achieving successful rehabilitation
- implement quality assurance processes to ensure rehabilitation methodologies are implemented effectively
- measure and monitor performance and take corrective action if these outcomes are not being achieved
- iteratively develop rehabilitation planning details that will be required to achieve the final land use and facilitate relinquishment of the mining lease.

What is the difference between an RMP under a development consent and under the mining lease?

Lease holders will still be required to comply with any conditions of their development consents issued under the *Environmental Planning and Assessment Act 1979*. Some development consents, particularly State significant development consents, require the mine to prepare and implement a rehabilitation management plan (RMP). As is currently the case, the RMP lodged under the development consent and the RMP prepared under the Mining Regulation (currently the mining operations plan) can be the same document. The NSW Resources Regulator will regulate against the RMP prepared and implemented under the *Mining Act 1992*.

What is the purpose of the annual rehabilitation report and forward program?

The annual rehabilitation report and forward program consists of two components: the annual rehabilitation report and a forward program. These documents are submitted to enable us to determine whether a lease holder is rehabilitating land and water in the mining area 'as soon as reasonably practicable' after disturbance occurs, as required by the Regulation (and the commitments made within the rehabilitation management plan and forward program).

The annual rehabilitation report must:

- report the rehabilitation carried out on the land during the previous 12-month period
- provide data and information on rehabilitation, to allow us to assess whether the land is being progressively rehabilitated and is on a path towards achieving the approved rehabilitation objectives, rehabilitation completion criteria and final land use.

The forward program must:

- specify all rehabilitation, monitoring and related activities to be carried out on the land for the next three years
- detail the spatial progression of rehabilitation (rehabilitation phase) in the next three-year term
- ensure that rehabilitation of land and water disturbed by mining activities occurs as soon as reasonably practicable after the disturbance occurs.

Separate form and way requirements for annual rehabilitation reports and forward programs apply to large mines and small mines.

What does ‘rehabilitate as soon as reasonably practicable’ mean?

The term ‘reasonably practicable’ is used to describe the rehabilitation obligations on lease holders in various clauses in the Regulation. Reasonably practicable is not defined in the Regulation and must be determined objectively. This means that a lease holder must meet the standard of behaviour expected of a reasonable person in the lease holder’s position.

The following elements will be considered by the NSW Resources Regulator when determining what is ‘reasonably practicable’ for the purposes of mine rehabilitation:

- what was known, or ought to have been known by the lease holder at the time
- what was reasonably foreseeable to the lease holder at the time
- what was possible in the circumstances, that is what could be done
- whether it was reasonable in the circumstances to do all that was possible.

Cost is not generally considered to be a relevant matter when determining what is ‘reasonably practicable’ for the purposes of preventing environmental harm or the timeliness of rehabilitation, unless the cost is grossly disproportionate to achieving the intended outcome.

The department will be providing further guidance on our website regarding the term 'reasonably practicable'.

How will the new reporting requirements relate to reporting requirements for State significant mines?

Mines that are State significant developments are required by their development consent to submit a compliance and performance report, called an annual review, every year.

The annual rehabilitation report and forward program has been designed so a state-significant mine can choose to submit it as an appendix to the annual review. This aims to avoid duplicating reporting requirements under the mining lease and the development consent. Lease holders will continue to be able to apply to the Secretary to align the reporting date of the annual rehabilitation report and forward program, with the annual reporting requirements of its consent and other regulators. Lease holders seeking to align these separate reporting requirements must ensure that all relevant regulators are satisfied with the adequacy and scope of information provided in the annual rehabilitation report and forward program.

What documents will I need to lodge?

Lease holders will be required to prepare and submit to the Secretary the following for approval:

- rehabilitation objectives
- rehabilitation completion criteria
- final landform and rehabilitation plan (for large mines only).

Lease holders will also be required to prepare and submit to the Secretary an annual rehabilitation report and forward program.

Lease holders will not be required to submit the rehabilitation management plan to the Secretary, however, will be required to make this plan readily available, to both us and the community, by publishing on their website or making a copy available upon written request.

What documents do I need to publish?

Mines will be required to publish the following documents on their website:

- rehabilitation management plan
- forward program
- annual rehabilitation report.

If the mine does not have a website, then they will be required to provide a copy within 14 days to any person who requests a copy.

When does a rehabilitation cost estimate need to be submitted?

The department uses the rehabilitation cost estimate to help determine the amount of the security deposit held for each mine. The rehabilitation cost estimate is an estimate of the rehabilitation costs in relation to any land or water, prepared and calculated in accordance with guidelines approved by the Secretary.

A rehabilitation cost estimate is currently required under the Mining Regulation 2016 as prescribed information in the following circumstances:

- renewal of exploration licence
- renewal of assessment leases
- renewal of mining leases
- transfer of authorities.

In addition to the existing regulatory requirements set out above, under the new arrangements, lease holders will be required to:

- submit a rehabilitation cost estimate as part of the annual rehabilitation report and forward program
- resubmit a rehabilitation cost estimate as directed by the Secretary.

Following an assessment, if the rehabilitation cost estimate is determined to be inadequate, it will be rejected and either the lease holder will be asked to submit a revised rehabilitation cost estimate, or the Secretary will determine the security amount.

What is the new mine rehabilitation portal?

The mine rehabilitation portal is an online tool that helps collect rehabilitation spatial data into a centralised geo-database. The final landform and rehabilitation plan, as well as rehabilitation data included in the annual rehabilitation report and forward program, will be required to be submitted to us using the mine rehabilitation portal.

The portal will help the NSW Government monitor and regulate rehabilitation requirements for mining activities.

Lease holders will be able to use the portal to accurately record and track areas of disturbance and check rehabilitation progress across individual sites. The portal will also generate rehabilitation key performance indicators for use in the annual rehabilitation report and forward program.

When will the new mine rehabilitation portal be available?

The mine rehabilitation portal is currently available for lease holders to submit spatial data. However, submission requirements will be linked to the transitional arrangements. Guidance has been prepared to assist industry in relation to the mine rehabilitation portal, including information about the mine rehabilitation portal and account registration and our requirements for the format of spatial data to be submitted via the portal.

In 2021, we will be conducting workshops with industry to assist with the submission of spatial data to the mine rehabilitation portal.

How often does spatial data need to be submitted?

Spatial themes will be submitted as part of the following documents:

- final land form and rehabilitation plan
- annual rehabilitation program and forward program.

The table below provides a summary of the submission requirements for each spatial data theme.

THEME NAME	SUBMISSION REQUIREMENTS
<ul style="list-style-type: none"> ■ Rehabilitation ■ Disturbance ■ Forecast data year 1 ■ Forecast data year 2 ■ Forecast data year 3 ■ Current landform contours 	Annually - aligned with annual rehabilitation report and forward program reporting requirements
<ul style="list-style-type: none"> ■ Final land use ■ Final landform features ■ Final landform contours ■ Project approval boundary 	Required with final landform and rehabilitation plan submission

Further details are provided in [Guideline: Mine rehabilitation portal](#), available on our website.

Will rehabilitation data be made public?

Yes. The NSW Government is committed to ensuring the community has access to reliable information about the environment. Making this data public will inform the community about rehabilitation progress on mine sites and future final land use and landform for the mines.

Individuals will be able to view data on a mine operator's rehabilitation progress via the NSW Government's Sharing and Enabling Environmental Data Portal (SEED) portal (www.seed.nsw.gov.au).

How do the new requirements relate to a mine's development consent?

The development consent sets out the mine design and the end goal for rehabilitation, including the rehabilitation objectives, rehabilitation scheduling, final land use and final landforms. The 'form and way' documents and the Regulation require the rehabilitation documents prepared pursuant to the mining lease conditions to be consistent with the development consent. The department will not approve rehabilitation objectives, rehabilitation completion criteria or final landform and rehabilitation plans¹ that are inconsistent with a development consent.

The rehabilitation management plan is also required to reference and incorporate all rehabilitation requirements set out in the development consent, and any rehabilitation objectives and rehabilitation completion criteria, landform design and land capability requirements.

Where there is an inconsistency between the rehabilitation management plan and the development consent, the lease holder will be required to amend the rehabilitation management plan to be consistent with the development consent.

Should the lease holder wish to modify an aspect of the relevant development consent, the lease holder must approach the relevant consent authority with this request. Any modification to the development consent will require assessment and approval under the *Environmental Planning and Assessment Act 1979*. The lease holder will be required to notify the Secretary if an application is made for a development consent that related to the mining area or if an application for modification is made that relates to rehabilitation of the mining area².

¹ The 'final landform and rehabilitation plan' is a spatial depiction of the approved final landform in the development consent.

² This requirement of the Regulation only applies to applications and modifications to existing consents that are not State significant development. This is because the department is already consulted about State significant developments.

Consultation

Stakeholder consultation was undertaken on the draft Regulation and form and way documents in 2020 and on the guidelines in 2021. The feedback received, through the online public consultation forums and written submissions, was carefully considered in the development of the final versions the Regulation, form and way documents and guidelines.

Earlier stakeholder consultation with key government agencies, mining lease holders, agents, industry groups and not-for-profit community groups on the proposed changes occurred in 2017 and 2018. The stakeholder feedback received was taken into consideration when finalising the proposed key components of the changes to:

- present a framework for achieving improvements in rehabilitation compliance and outcomes under the *Mining Act 1992*
- produce conditions that set clear, achievable and enforceable requirements for rehabilitation
- reduce barriers to industry being able to adopt and implement the new approach.

Further information

Please visit our [website](#) for further information. For further information contact us at nswresourcesregulator@service-now.com or 1300 814 609 (option 2, then 5). To be kept up to date, [subscribe to Mine Rehabilitation News](#).

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