

Authorisations	<ol style="list-style-type: none">1. Exploration Licence No. 8308 (Act 1992) (EL 8308)2. Exploration Licence No. 8309 (Act 1992) (EL 8309)3. Exploration Licence No. 8310 (Act 1992) (EL 8310)4. Exploration Licence No. 8311 (Act 1992) (EL 8311)5. Exploration Licence No. 8312 (Act 1992) (EL 8312)6. Exploration Licence No. 8385 (Act 1992) (EL 8385)7. Exploration Licence No. 8560 (Act 1992) (EL 8560)8. Exploration Licence No. 8648 (Act 1992) (EL 8648)9. Exploration Licence No. 8769 (Act 1992) (EL 8769)10. Exploration Licence No. 8865 (Act 1992) (EL 8865)
Licence Holder	Relentless Resources Limited ACN 160 863 892 (RRL)
Issue	Whether to suspend the authorisations Whether to impose a Mandatory Audit Condition
Legislation	Section 240AA of the <i>Mining Act 1992</i> Clause 12 of Schedule 1B of the <i>Mining Act 1992</i>
Decision maker	Anthony Keon Executive Director, NSW Resources Regulator Department of Regional NSW

DECISION TO NOT SUSPEND AUTHORISATIONS

As authorised by Section 240AA of the Mining Act 1992 (Act), I Anthony Keon, having delegated authority from the Secretary of Regional NSW (Department), have determined **not** to issue a direction to the above authorisation holders to suspend operations.

However, as alternate to issuing a suspension direction, and to address the identified risks, I have determined to attach a condition to the authorisations.

DECISION TO VARY AN AUTHORISATION

As authorised by Clause 12 of Schedule 1B of the *Mining Act 1992* (**Act**), I Anthony Keon, having delegated authority from the Minister, have decided to **attach the following condition** on EL 8308, EL 8309, EL 8310, EL 8311, EL 8312, EL 8385, EL 8560, EL 8648, EL 8769 and EL 8865 (**ten (10) exploration licences**).

The condition states:

“Mandatory Audit Conditions

2021 audit

1. By 1 September 2021, the licence holder must submit to the Secretary:
 - a. an audit report (2021 audit report), completed by an auditor, independent to the licence holder, detailing the findings of the audit, including any recommendations to the licence holder; and
 - b. a supplementary report (2021 supplementary report), completed by the licence holder, responding to the findings and recommendations contained within the 2021 audit report.
2. The 2021 audit report must:
 - a. provide information on the effectiveness of any systems and processes in place for meeting compliance obligations under the authority; and
 - b. recommend to the licence holder, measures or actions to achieve compliance.

2023 audit

3. By 1 September 2023, the licence holder must submit to the Secretary:
 - a. an audit report (2023 audit report), completed by an auditor, independent to the licence holder, detailing the findings of the audit, including any recommendations to the licence holder; and
 - b. a supplementary report (2023 supplementary report), completed by the licence holder, responding to the findings and recommendations contained within the 2023 audit report.
4. The 2023 audit report must:
 - a. for the period 1 September 2021 to 30 June 2023, provide information on the licence holder’s compliance with the *Mining Act 1992 (Act)* and *Mining Regulation 2016 (Regulation)* (or as amended, modified or replaced from time to time), including all licence conditions and conditions of authority imposed under the Act and Regulation, including activity approvals and codes of practice.
 - b. provide information on the effectiveness of any systems and processes in place for meeting compliance obligations under the authority; and
 - c. recommend to the holder of the authorisation, measures or actions to achieve compliance.

Audit requirements

5. Both audits, including the preparation of the 2021 audit report and 2023 audit report, must be completed in accordance with current auditing standards ‘AS/NZS 19011:2018 – Guidelines for auditing management systems’ as updated, amended, modified or replaced from time to time.
6. The auditor must hold accreditation with a relevant industry body (one accredited by the Joint Accreditation System of Australia and New Zealand JAS-ANS).
7. Both the 2021 audit report and the 2023 audit report must be accompanied by a declaration signed by the auditor:

- a. setting out the auditor’s qualifications and accreditation; and
 - b. certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.
8. The licence holder must provide all reasonable assistance to the independent auditor undertaking the audit.
 9. Both the 2021 supplementary report and 2023 supplementary report must be accompanied by a declaration signed by the licence holder certifying that the licence holder has not knowingly provided any false or misleading information to the auditor and has provided all relevant information to the auditor.
 10. Both audits must be conducted at the expense of the licence holder.
 11. All audit and supplementary reports (including supporting information) must be submitted by email to the Secretary at nswresourcesregulator@service-now.com, or as otherwise specified by the Secretary.”

This condition takes effect from **24 May 2020**.

REASONS FOR DECISION

Legislation – Suspension

1. Section 240AA(1) of the Act provides that the Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:
 - a. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(b)-(g), 203(1)(b)-(e) or (h) or 233(1)(b)-(d), or
 - b. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.
2. Section 240AA(2) of the Act provides that before giving a suspension notice, the Secretary is to:
 - a. cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation;
 - b. give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice; and
 - c. take any such representations into consideration.

3. Section 125(1) of the Act sets out a number of grounds for cancellation which can be relied upon when issuing a suspension notice. These include if the decision-maker is satisfied that:
 - a. Section 125(1)(b) – the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), and
 - b. Section 125(1)(c) – a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
4. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister.
5. The Secretary has delegated the functions to suspend all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations under section 240AA of the Act to the Executive Director of the NSW Resources Regulator (**Regulator**).

Legislation – Variation of authorisation

6. Clause 12(1) of Schedule 1B of the Act provides that the relevant decision-maker may vary an authorisation (including the conditions of an authorisation).
7. Clause 12(2)(a) of Schedule 1B of the Act provides that a variation of an authorisation may include the attaching of a condition (whether or not any conditions have already been attached).
8. Clause 12(3) of Schedule 1B of the Act enables the authorisation to be varied on the initiative of the relevant decision-maker.
9. Clause 12(4) of Schedule 1B of the Act enables the authorisation to be varied at any time during its currency.
10. Clause 12(5) of Schedule 1B of the Act requires the decision-maker to:
 - (a) give the holder of the authorisation notice of the decision, and
 - (b) invite the making of submissions to the decision-maker about the proposed decision and provide at least 28 days to make a submission, and
 - (c) take into consideration any such submission after the submission period has expired.
11. Clause 12(6) of Schedule 1B of the Act requires the decision to be given in writing to the licence holder.

12. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person.
13. The Minister has delegated the functions to vary an authority under Clause 12(1) of Schedule 1B of the Act to the Executive Director of the Regulator.

Background

14. Relentless Resources Limited (ACN 160 863 892) (**RRL**) currently holds ten (10) exploration licences in NSW for the purpose of prospecting for Group 10 minerals (Mineral sands). Group 10 minerals include ilmenite, leucoxene, monazite, rutile and zircon (refer to table 1 for further information).

Table 1: RRL exploration licences

Exploration Licence (EL)	Grant Date	Expiry Date	Particulars
EL 8308 (Act 1992)	13/10/2014	13/10/2022	Transfer to RRL approved on 7 August 2017 and registered on 6 September 2017 Last renewed on 18 December 2019
EL 8309 (Act 1992)	13/10/2014	13/10/2022	Transfer to RRL approved on 7 August 2017 and registered on 6 September 2017 Last renewed on 18 December 2019
EL 8310 (Act 1992)	13/10/2014	13/10/2022	Transfer to RRL approved on 7 August 2017 and registered on 6 September 2017 Last renewed on 18 December 2019
EL 8311 (Act 1992)	13/10/2014	13/10/2022	Adjoins EL8560 and EL 8648 Transfer to RRL approved on 20 November 2017 and registered on 1 March 2018 Last renewed on 18 December 2019
EL 8312 (Act 1992)	13/10/2014	13/10/2022	Adjoins EL 8385, EL 8769 and EL 8865 Transfer to RRL approved 21 November 2017 and registered on 1 March 2018 Last renewed on 18 December 2019
EL 8385 (Act 1992)	19/08/2015	19/08/2023	Adjoins EL8312, EL8769 and EL 8865 Transfer to RRL approved on 20 November 2017 and registered on 1 March 2018 Last renewed on 8 March 2021
EL 8560 (Act 1992)	11/05/2017	11/05/2023	Adjoins EL 8311 and EL 8648 Transfer to RRL approved on 7 August 2017 and registered on 6 September 2017 Last renewed on 13 July 2020

Reasons for decision

EL 8648 (Act 1992)	15/09/2017	15/09/2023	Adjoins EL 8311 and EL 8560 Last renewed on 13 November 2020
EL 8769 (Act 1992)	9/07/2018	9/07/2021	Adjoins EL 8312, EL 8385 and EL8865
EL 8865 (Act 1992)	20/06/2019	20/06/2022	Adjoins EL 8312, EL 8385 and EL 8769

15. The Department has granted RRL several activity approvals in accordance with section 23A(4) of the Act, to carry out assessable prospecting operations on EL 8309, EL 8311, EL 8312, EL 8385, EL 8560 and EL 8648.
16. On 9 December 2020, Inspectors from the Regulator conducted a site inspection of EL 8312 followed by a desktop audit of records with representatives from RRL on 15 December 2020. This inspection was conducted as part of the Regulator’s compliance audit program and in response to an investigation into alleged breaches of the Act as advised in the Regulator’s commencement of investigation letter dated 24 November 2020.
17. Between 2 and 4 March 2021, Inspectors conducted a further site inspection of EL 8312, EL 8385, EL 8560, EL 8311, and EL 8648 in the company of the relevant landholders.
18. The Regulator identified numerous compliance concerns arising from these inspections.

Proposed Grounds for Suspension

19. On 24 March 2021, I issued a proposed suspension notice for the ten (10) exploration licences on RRL. This notice outlined the grounds for cancellation relied upon in proposing suspension.
20. In short, these grounds included the following:

Table 2: Grounds for cancellation

#	Exploration Licence (EL)	Particulars	Relevant legislation
1	EL 8311	Failure to comply with activity approval granted on 19 July 2019: <ul style="list-style-type: none"> • Unapproved access tracks • Excessive drill depths 	Section 23A (Condition) Section 378D(1) (Offence Provision)
2		General condition 6 - Rehabilitation (Unrehabilitated drill holes)	Section 378D(1) (Offence Provision)
3	EL8312	Failure to comply with activity approval granted on 4 December 2019:	Section 23A (Condition)

		<ul style="list-style-type: none"> Unapproved access tracks Excessive drill depths 	Section 378D(1) (Offence Provision)
4		Failure to comply with activity approval granted on 6 October 2020: <ul style="list-style-type: none"> Use of unapproved drill rig Unapproved access tracks Excessive drill depths 	Section 23A (Condition) Section 378D(1) (Offence Provision)
5		General condition 3 – community consultation (No community consultation strategy)	Section 378D(1) (Offence Provision)
6		General condition 6 – Rehabilitation (Unrehabilitated drill holes)	Section 378D(1) (Offence Provision)
7		Provide false or misleading information 'ESF2 Rehabilitation completion and/or review of rehabilitation cost estimate and/or notification of mine or petroleum site closure' form (ESF2 Form) submitted on 1 September 2020.	Section 378C
8		Provide false or misleading information 'Environmental and Rehabilitation Compliance Report' (ERC Report) dated 11 November 2020	Section 378C
9	EL 8385	Failure to comply with activity approval granted on 19 July 2019: <ul style="list-style-type: none"> Excessive drill depths 	Section 23A (Condition) Section 378D(1) (Offence Provision)
10	EL 8560	Failure to comply with activity approval granted on 19 July 2019: <ul style="list-style-type: none"> Excessive drill depths 	Section 23A (Condition) Section 378D(1) (Offence Provision)
11	EL 8648	Failure to comply with activity approval granted on 19 July 2019: <ul style="list-style-type: none"> Unapproved access tracks Excessive drill depths 	Section 23A (Condition) Section 378D(1) (Offence Provision)
12		General condition 6 – Rehabilitation (Unrehabilitated drill holes)	Section 378D(1) (Offence Provision)

21. All 12 grounds, if substantiated, constitute a contravention of a provision of the Act [section 125(1)(b) of the Act].

22. All grounds except 7 and 8 also constitute a contravention of a condition of Authorisation [section 125(1)(c) of the Act].

Representations – proposed suspension

23. In accordance with section 240AA(2) of the Act, the proposed suspension notice invited RRL to provide a submission in response to my proposed decision to suspend the ten

- (10) explorations licences held by RRL. Any submission was due by no later than 5.00pm on 9 April 2021.
24. At 1.24pm on 8 April 2021, the Regulator received a submission from RRL.
25. Of note, RRL submitted the following:
- a. That any proposed suspension of the exploration licences will serve no practical purpose, is disproportionate and would result in a severe disruption to RRL's exploration program and incur substantial and unnecessary costs.
 - b. Rehabilitation works on EL 8311 and EL 8648 have commenced and will be completed by the end of April 2021.
 - c. *"RRL commits that it will continue to work with all stakeholders, particularly with the Regulator to ensure that any inadvertent mis-interpretations or errors that may have occurred in its completion of Forms is rectified with all parties working together so that such misunderstanding will not happen again"*.
 - d. In direct response to the unapproved access tracks [Grounds 1, 3, 4 and 11], RRL referred to section 11.8 of the 'ESF4 Application to conduct exploration activities for assessable prospecting operations' form (ESF 4 form) submitted and highlighted in bold the sentence *"Where there is no evidence of tracks a single track will be created by the continuous driving of the vehicles on this track to the drill sites"*. RRL submitted that it, *"sought consultation with the landholder on all aspects of the drill program including access tracks (as it did with other drill campaigns)"*.
 - e. In direct response to rehabilitation [Grounds 2, 6 and 12], RRL submitted that it has completed and continues to complete the rehabilitation of tracks and drill holes scheduled into its works, with the works on EL 8311 and EL 8648 commencing in early 2020 with *"+60km of tracks and 4 of the 7 drill traverses completed"*. Further the rehabilitation of EL 8312 is now practically completed as planned.
 - f. Further, rehabilitation was unable to be completed due to travel restrictions resulting from COVID, contractor availability, and land access being denied between September 2020 and February 2021.
 - g. In direct response to the excessive drill depths [Grounds 1, 3, 4, 9, 10 and 11], RRL submitted that the ESF4 Forms were overly descriptive and unnecessarily restrictive, and that the additional information was provided in good faith as a general guide based on known factors. Further, following advice from industry experts and other mineral sands explorers, RRL submits that it is not common practice to include this level of detail.
 - h. In direct response to the unapproved drill rig [Ground 4], RRL submitted that the program was delayed, the rig was unable to be held and it was no longer available.

- RRL submitted that it made a decision in good faith to use a lower ground impact vehicle and had again received advice from industry experts and other explorers that it was not common practice to include the specifics of the rig planned (apart from it being an air core drill rig), due to the nature of the asset availability.
- i. In response to Ground 5, RRL submitted that it had identified community consultation as a risk to the project's success; and was in the process of finalising a developed community and stakeholder standard. Further RRL submitted that it *“considers that community consultation is an ongoing responsibility and it is updating and improving its strategy as a matter of course, but it strongly denies that its extensive community consultation to date could in any way be viewed as a breach of a general condition”*.
 - j. In response to Ground 7, RRL submitted that it has been in consultation with the landholder prior to, during and post any drilling or other works. RRL further submits that; in this instance the landowner was verbally notified of the completed rehabilitation works in a meeting held between the landowners and RRL held on 11 February 2020 in Wentworth. RRL submitted that *“Post this meeting it was on the advice of the resources regulator after RRL notified that the landowner was unlikely to provide formal written approval of any rehabilitation works, that RRL sought and was granted regulator approval for the ‘partially/progressive rehabilitation”*.
 - k. In response to Ground 8, RRL submitted that reference in the report that the 61 drill holes had been ‘plugged and rehabilitated’ was an error, and that, *“this error was obviously unintentional and that RRL has not intentionally provided false or misleading information”*. Further, these holes will be rehabilitation by the end of April 2021 and RRL will submit a completed ESF2 form seeking approval from the Regulator.
26. Further written submissions were received from RRL on 5 May 2021. Of note RRL submitted the following:
- a. RRL has completed all rehabilitation works at EL 8312 and is in the process of completing an ESF2 Form for submission.
 - b. RRL has completed rehabilitation works on the exploration holes on EL 8311 and EL 8648. RRL noted that it had previously completed the rehabilitation, however, the landholder required rework to be completed and wanted rehabilitation of some access tracks. The rehabilitation of the access tracks is ongoing, and it is predicted to be completed by the end of May after which an ESF2 Form will be submitted.

- c. *“RRL has had a good look at its processes and has started to put new management practices in place in accordance with a business’s natural progression”.*
- d. *“One of the learnings that has come out of this is that RRL’s previous ESF4 forms were unduly proscriptive, and this has led to unfortunate literal interpretation of just what was allowed pursuant to the approval of its previous ESF4 Forms”.*
- e. *“At no time was RRL consulted about the extent or the gravity of the situation, the detail of the complaints, the concern about drill rigs and drill hole depths etc until its receipt of the Notice dated 24 March 2021”.*

Considerations and findings – Proposed suspension

- 27. I am satisfied that the requirements of section 240AA(2) of the Act to notify the licence holders in writing of the proposed suspension notice have been adhered to. RRL was afforded reasonable opportunity to make representations and these representations have been fully considered in making my decision.
- 28. In doing so, I have carefully considered all the information before me and I have given due regard to the following:
 - a. The relevant activity approvals granted by the Regulator:
 - b. The inspection conducted by the Regulator on 9 December 2020.
 - c. The meeting between the Regulator and RRL held on 15 December 2020.
 - d. The inspection conducted by the Regulator between 2 – 4 March 2021.
 - e. The representations made by RRL in its submission of 8 April 2021 and 5 May 2021.
- 29. I have carefully considered RRL’s submission in response to the unapproved access tracks. Having regard to RRL’s submissions and the information currently before me, I am not currently satisfied that the creation of access tracks in this case constitutes a clear breach of the activity approvals for EL 8311, EL 8312 and EL 8468. As such, I am not satisfied that Grounds 1, 3, 4 and 11 have been satisfactorily made out, and accordingly I have dismissed them from any further consideration.
- 30. On the available information I accept RRL’s submission that the landholder was verbally notified of the completion of the rehabilitation works in a meeting held on 11 February 2020 in Wentworth. Accordingly, I have also decided to set aside Ground 7 and will not consider it further in making my decision.
- 31. I do however note that the investigation is ongoing, and my decisions at paragraphs 29 and 30 is made on the information currently before me, and does not preclude the department from taking any other action in the future should this position change.

32. Based on the material before me, I am satisfied that RRL has contravened a provision of the Act with respect to Grounds 1 to 6 & 8 to 12.
33. In relation to Grounds 1, 3, 4, 9, 10 and 11, I do not accept RRLs submission that the level of detail provided in its applications were not necessary or in line with industry standards, and was simply provided in 'good faith'. This information is required in order for the department to appropriately assess the impacts of the proposed activities. Further, the relevant approvals were based on adherence to these specifications, which was required to be complied with. It is not open to the authorisation holder to disregard these requirements, even if they have a differing view of the potential impacts or importance.
34. In relation to Ground 8, while I accept that supply of the erroneous information may have been unintentional, I am of the view that its supply was reckless given the importance of the statement, how incorrect the information was, and that there was not appropriate oversight to identify the error. Accordingly, I am satisfied that a contravention of 378C has occurred, however I am only placing minimal weight to this ground.
35. As such, circumstances exist that constitute grounds for cancellation of all ten (10) exploration licences under sections 125(1)(b) and 125(1)(c) of the Act.
36. However, having carefully considered the severity and type of offending and the regulatory options available to me, I do not consider suspension action to be a proportionate regulatory response taking into account the submissions of RRL and the remedial actions taken to address the non-compliance issues. Accordingly, I have decided **not** to suspend the ten (10) exploration licences.
37. Rather, I have decided that it is appropriate in this instance to vary and attach a Mandatory Audit Conditions to all ten (10) exploration licences held by RRL to ensure future compliance with the Act.

Proposed Variation of Authorisation

38. On 11 May 2021, the Regulator provided RRL with a copy of the proposed Mandatory Audit Condition for comment.
39. On 12 May 2021, RRL responded and confirmed that it would have no objection to the imposition of the proposed Mandatory Audit Conditions on the exploration licences.
40. On 13 May 2021, I formally wrote to RRL proposing the imposition of the Mandatory Audit Conditions on the ten (10) exploration licences.
41. In accordance with clause 12(5)(b) of Schedule 1B of the Act, RRL was invited to make submissions by no later than 5.00pm 11 June 2021.
42. On 14 May 2021, RRL replied by email, stating "*Relentless Resources does not wish to make any further submissions*".

Considerations and findings – Variation of Authorisation

43. I am satisfied that the requirements of clause 12(5) of Schedule 1B to the Act have been met and that RRL was provided an opportunity to make a submission in response to my proposed decision.
44. I note that RRL have accepted the proposed Mandatory Audit Conditions and declined to make further submissions.
45. Having considered all the information before me, it is my view that the risk of any further offending can be adequately managed by RRL through the development of improved systems and process for meeting compliance obligations, including compliance with exploration licence conditions, and conditions of authority imposed under the Act and *Mining Regulation 2016*, including activity approvals and codes of practice.
46. I am satisfied that the Mandatory Audit Conditions will achieve a positive regulatory outcome and ensure that RRL has management systems in place to ensure future compliance.

Conclusion

47. Based on the material before me, I have decided **not** to suspend the ten (10) exploration licences.
48. I am however, satisfied that there are sufficient grounds to **attach** the Mandatory Audit Condition to all ten (10) exploration licences.
49. I therefore **vary** the ten (10) exploration licences and **attach** the Mandatory Audit Condition to each licence.
50. This decision takes effect from 24 May 2021.
51. This decision in no way precludes the Resources Regulator from taking any other regulatory action against RRL in relation to any of the identified breaches that form the basis of this decision.

Date of decision: **20 May 2021**



Anthony Keon
Executive Director
NSW Resources Regulator

Note: In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator's website: www.resourcesregulator.nsw.gov.au