

MINE REHABILITATION REGULATORY FRAMEWORK

Regulatory processes over the life of a mining project

Exploration phase

The Division of Resources and Geoscience (DRG) is responsible for administering exploration titles under the *Mining Act 1992*.

The holder of an exploration title is required to rehabilitate any disturbance in accordance with the conditions of the title¹. Generally, land must be rehabilitated to a condition that is as good or better than existed prior to the exploration activity.

All exploration titles are subject to a minimum \$10,000 security bond upon grant. The security bond is regularly reviewed and adjusted based on a rehabilitation cost estimate for all assessable prospecting activities. This is not returned until rehabilitation has been determined to be successful.

Compliance and enforcement activities, including oversight of rehabilitation activities, are undertaken by the NSW Resources Regulator to ensure these conditions are met.

Development assessment and approval phase

Mining activities require development consent under the *Environmental Planning and Assessment Act 1979*. The consent authority is generally the Independent Planning Assessment Commission or Department of Planning for State significant developments (SSD) and the relevant local council for non-SSD projects.

The consent authority undertakes a rigorous assessment of all mining proposals. Post-mining landforms and land uses are carefully assessed in conjunction with the NSW Resources Regulator and must meet clear objectives and outcomes. Rehabilitation requirements are determined on a case by case basis. The consent authority considers a range of criteria in determining the acceptability of proposed post-mining land uses and landforms. These criteria include the sensitivity of receiving environments, the local

¹ For titles granted, renewed or transferred post 1 July 2015, titleholders are required to comply with the *Exploration Code of Practice: Rehabilitation*.

hydrology and hydrogeology, visual impacts, the nature of the mine plan and the values associated with the land.

Rehabilitation commitments and post mining land use objectives are defined as part of the development consent. Clause 17 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive) 2007* requires the consent authority to consider if the consent should include conditions to require rehabilitation, and the NSW Resources Regulator advises the consent authority in this regard.

The NSW Resources Regulator provides advice in relation to the adequacy and feasibility of the rehabilitation strategy, including proposed rehabilitation methods and techniques, and whether the strategy will enable the proposed post-mining land use and landforms to be established within a reasonable timeframe.

The consent authority determines the acceptability of the rehabilitation proposal, including proposed post-mining land uses and landforms. Development consent conditions are imposed to define the post-mining land use that must be achieved by the proponent and commonly:

- require progressive rehabilitation
- require reporting against agreed rehabilitation objectives and completion criteria
- require the preparation and implementation of a rehabilitation strategy and/or rehabilitation management plan; and provide for an Annual Review of all operations (including mining operations and rehabilitation) and independent triennial audits of adherence to conditions of consent and other major approvals such as the environmental protection licence and the mining lease.

Operational phase

The NSW Resources Regulator regulates rehabilitation activities against the conditions of the mining lease (issued under the *Mining Act 1992*), to ensure rehabilitation commitments outlined in the development consent are met.

Title holders are required to lodge a Mining Operations Plan for approval by the NSW Resources Regulator, which provides specific and measurable criteria regarding to the rehabilitation implementation strategy for the project. The plan must be consistent with the development consent.

The conditions of a mining lease also require a titleholder to report against agreed rehabilitation objectives and completion criteria. The NSW Resources Regulator undertakes an auditing, compliance and enforcement program to ensure titleholders meet their rehabilitation obligations.

A rehabilitation security deposit, which is assessed and determined by the NSW Resources Regulator, is lodged by a titleholder with DRG prior to the commencement of disturbance. The deposit covers the full cost of rehabilitation should the company default on its obligations. The rehabilitation security deposit is

continuously revised over the life of the project, to account for the extent of disturbance requiring rehabilitation.

Post mining closure phase

The title and the associated rehabilitation security deposit, under the *Mining Act 1992*, are not relinquished until the titleholder has provided the NSW Resources Regulator with sufficient evidence to demonstrate that all rehabilitation obligations have been met. This information is provided in an application to the NSW Resources Regulator.

Following the relinquishment of a title, the NSW Resources Regulator has the power to issue directions to a former titleholder to require further rehabilitation works (e.g. where there has been a revegetation failure).

Regulatory tools

Rehabilitation security deposits

As a condition of title, titleholders must lodge a security deposit with DRG up front (before any disturbance), to cover the full cost of rehabilitation in the event of default. A security deposit is either submitted as cash or in the form of a bank guarantee.

A titleholder is required to provide the NSW Resources Regulator with a rehabilitation cost estimate for assessment. The scope of a rehabilitation cost estimate will include works associated with but not limited to decommissioning, remediation of contamination, landform establishment, revegetation, habitat establishment and environmental and rehabilitation monitoring.

The NSW Resources Regulator considers the rehabilitation cost estimate in the determination of the rehabilitation security amount, and this must reflect the rehabilitation status of the specific operation. The NSW Resources Regulator undertakes reviews of security deposits and can review and adjust security at any point in time.

A release of security is contingent upon the NSW Resources Regulator being satisfied that rehabilitation obligations have been met.

Compliance and enforcement

The NSW Resources Regulator's compliance and enforcement program focuses on both progress and quality, to ensure that rehabilitation is on a trajectory towards meeting the final land use outcomes.

The NSW Resources Regulator takes a risk-based approach to regulating rehabilitation, with all mining operations risk-ranked to ensure that resources are prioritised to those sites which present the highest risks to achieving regulatory outcomes. Auditors, inspectors and investigators monitor and enforce compliance with rehabilitation requirements.

As part of the compliance and enforcement program, titleholders are required to prepare annual reports detailing the outcomes of rehabilitation monitoring programs. In addition to site inspections, the NSW Resources Regulator utilises the information held in site records as well as in annual reports to determine whether progressive rehabilitation is satisfactory.

The NSW Resources Regulator has a range of compliance and enforcement powers under the *Mining Act 1992* to effectively regulate rehabilitation activities. These powers include:

- entering land and inspecting, copying and seizing evidence
- requiring persons to produce documents and answer questions
- issuing statutory notices and directions
- issuing penalty notices
- suspending or cancelling a title
- initiating prosecution action.

Heavy penalties can be imposed for non-compliances (max \$1.1m).

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