

31 October 2018

Resources Regulator
Department of Planning and Environment
PO Box 344
Hunter Region Mail Centre NSW 2310

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

Dear Resources Regulator,

Operational rehabilitation - compliance and reporting reforms

1. EDO NSW welcomes the NSW Government's efforts to improve mine rehabilitation in NSW. We support the regulatory objective for mine rehabilitation to achieve best practice progressive rehabilitation that will sustain the final land use outcomes.

Community consultation and input from technical professions

2. Given the broad ranging interest from the community in mine rehabilitation, we are concerned that the Resources Regulator focussed their consultation for these reforms on members of the mining and resources industries. While it has been stated that anyone is able to contribute submissions to the current consultation documents, information was not widely disseminated and as a result a number of community sectors with a strong interest in mine rehabilitation are likely to remain unaware of the opportunity to comment.
3. We note that the Resources Regulator is consulting on a number of documents, namely:
 - Proposed Mining Lease Conditions;
 - Code of practice: rehabilitation management plan for large mines;
 - Code of practice: rehabilitation management plan for small mines;
 - Code of practice: annual rehabilitation report and forward program for large mines;
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 - Guideline 1: Rehabilitation risk assessment;
 - Guideline 2: Rehabilitation records;

- Guideline 3: Rehabilitation controls;
 - Guideline 4: Rehabilitation GIS Portal – overview and access; and
 - Guideline 5: Rehabilitation GIS Portal – spatial data (GIS) guidelines.
4. This submission is limited to commenting on key legal issues associated with these reforms. We would strongly encourage the Resource Regulator to consult directly with technical professions in each area to ensure that the Codes of Practice and Guidelines are as robust as possible and properly represent current best practice. As an example of where such technical professionals would add value to this consultation, we note and welcome the proposal to require local provenance seed for revegetation but also note that the actions associated with this do not consider the need to maintain genetic diversity within this seed bank, something that will be increasingly important in the face of environmental changes arising from climate change.
 5. We welcome the change in language for mine rehabilitation from “safe, stable and non-polluting” to include a goal that the rehabilitated land can sustain the agreed final land use. This is an improved commitment for on-site management. In this context, we note the importance of maintaining the commitment for the area to be non-polluting as this will protect the off-site environment and surrounding communities. The requirement for rehabilitated land to be capable of sustaining the agreed final land use forms part of the mining lease and future conditions of consent (including where conditions are changed due to project modifications).

Mining lease conditions

6. We strongly welcome the proposal to strengthen the rehabilitation conditions of all mining leases. We make the following comments in relation to the proposed provisions:
 - Condition 1.1 - We do not support the use of the subjective term ‘*reasonable and feasible*’ in the requirement to prevent environmental harm. The environmental assessment process identifies the amount of environmental harm that is permitted by a project. Any harm beyond that should be considered unacceptable and all possible measures should be taken to avoid it. If the condition is not amended to reflect this, it should be clear that what constitutes ‘*reasonable and feasible*’ is a decision for the Minister or their delegate, not a decision for the lease holder.
 - Condition 2.1 – We submit that the ability of the Minister to allow a lease holder to avoid progressive rehabilitation should be limited in scope, for example, for safety reasons, rather than left as a broad Ministerial discretion.
 - Condition 4.3– This condition does not make it clear whether the Minister has the discretion to not approve the relevant criteria and plan submitted by the lease holder. The condition is worded in such a way as to imply that the Minister must approve the criteria and plan

regardless of the content and merit of these documents, as well as any subsequent document submitted in accordance with this condition. Clarification is required on the intended effect of this condition prior to the lease conditions being finalised and imposed.

- Condition 5.1 – We submit that it should be made clear that the first Annual Rehabilitation Report and Forward Program must be submitted no later than 15 months after the project commencement.
- Condition 5.3 – We make the same point regarding this condition as Condition 4.3 above, namely that clarification is required on whether the intended effect of this condition is that the Minister does not have the discretion to not approve the Forward Program, or any subsequent document submitted in accordance with this condition, based on the content and merit of these documents.
- Condition 8.1 – We submit that this condition creates another way for a lease holder to obtain consent to prospect, namely by obtaining the consent of the Minister under this condition. Clarification is required as to whether this is the intended effect of this condition.
- Condition 10 - The scale of security deposits requires further consideration prior to these conditions being finalised and implemented. We recognise the work that has been undertaken to date to increase the appropriateness of these deposits, however in our view, the mechanism by which these deposits are derived continues to significantly under value the true costs of rehabilitation as it only includes physical activities (such as re-creating a final landform) and short term actions (such as initial revegetation and maintenance), rather than the full cost of measures required to ensure long term sustainability.

Codes of Practice and Guidelines

7. We welcome the commitment in the *Code of practice: rehabilitation management plan for large mines* to ensure that mines approved under older development consents "...where Rehabilitation Objectives may be broad and non-specific (or even non-existent)" are brought into the current regulatory framework by requiring them to develop "*Rehabilitation Objectives and Completion Criteria to meet land use outcomes which are consistent with the development consent and have been agreed to with relevant stakeholders*".
8. We strongly welcome the introduction of a Rehabilitation GIS Portal. Guideline 4 indicates that the intention of the reforms is to ultimately replace hard copy maps of rehabilitation works (that are currently Mine Operation Plans) with the spatial information. In this regard, we note that the *Code of practice: rehabilitation management plan for large mines* indicates this spatial information "*may*" be made publicly available. Given the intention to replace hard copy maps with spatial information, it is important that the spatial information is made publicly available as soon as possible.

9. We encourage a broader range of reporting requirements (as outlined in Guideline 5) being made mandatory. Much of the data that is currently listed as voluntary is the information that will allow the Resource Regulator to better understand the rehabilitation techniques that have been most successful and whether rehabilitation programs are meeting their stated goals, such as whether specified vegetation community types are actually being achieved. This type of information is vital for driving best practice. Information related to vegetation communities is particularly important given the increasing dependency of conditions of consent on the ability of mines to generate biodiversity offsets through mine rehabilitation.

Concluding remarks

10. As part of these reforms, we encourage the Resource Regulator to give further consideration to the concept of mining lease extinguishment and the return of rehabilitation bonds. Rehabilitation completion criteria must change its focus from the initial stages of rehabilitation, such as finalising landforms and undertaking revegetation or the trajectory of groundwater recovery, and move to ensuring long-term stability in groundwater and surface water regimes and full ecological restoration, which can take hundreds, or in the case of groundwater even thousands, of years.
11. The issues of 'care and maintenance' should also be addressed. In NSW, the Auditor General has indicated concern that mines can avoid or delay rehabilitation responsibilities by entering an indefinite, and often undefined, 'care and maintenance' mode. Responsibilities during 'care and maintenance' tend to relate to keeping a site safe and stable, and avoid any need to undertake progressive or meaningful rehabilitation. A decision to enter 'care and maintenance' can occur with no need for the proponent to provide certainty as to when they will recommence operations or close and rehabilitate the mine. The Mining Act imposes no limitations on the situations in which the Minister can agree to a mine entering 'care and maintenance' mode.

Thank you for your consideration of our submission. If you have questions, please do not hesitate to contact us on 9262 6989 or by email:

rachel.walmsley@edonsw.org.au.