

**Submission
No 1**

**EXAMINATION OF AUDITOR-GENERAL'S PERFORMANCE AUDIT
REPORTS MAY 2017 - DECEMBER 2017**

Organisation: NSW Department of Planning and Environment

Date Received: 13 July 2018



Mr Bruce Notley-Smith MP
Chair
Legislative Assembly Public Accounts Committee

By Email: PublicAccountsCommittee.PAC@parliament.nsw.gov.au

Dear Mr Notley-Smith

I am writing in response to your letter dated 21 June 2018 requesting a submission on behalf of the Department of Planning and Environment to outline the Department's response to the Auditor-General's Performance Audit Report – Mining Rehabilitation Security Deposits (Audit) tabled on 11 May 2017.

As outlined in the Department's response to the report in May 2017, the audit report is welcomed and the recommendations are supported by the Department. Progress against implementing each recommendation is provided in **Attachment A**.

Over the last 12 months, significant work has been undertaken by the Department to address the audit recommendations. Of note, responsibility for monitoring and enforcing rehabilitation activities was transferred to the Resources Regulator in February this year from the Division of Resources and Geoscience, and the Regulator is now leading the Operational Rehabilitation – Compliance and Reporting Reforms (ORCRR). The overall objective of the ORCRR is to improve the regulatory mechanism for achieving best practice rehabilitation by improving the clarity and enforceability of mining lease conditions and the quality of technical standards and guidance.

Amongst the key outcomes of the reform to date has been the release of a new rehabilitation security calculation tool in July 2017, which provides improved insurance that security deposits are sufficient - in line with the audit recommendations. In addition, the Rehabilitation Geographic Information System (GIS) Portal has been developed and is currently being migrated into production. This new portal will provide greater transparency in how the Department determines progress and success of mine rehabilitation.

It is important to recognise that while the Audit focussed on the Department's regulatory processes under the *Mining Act 1992*, the regulatory framework for mine rehabilitation also encompasses the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. In this respect final land use post mining (which includes the final landforms and rehabilitation requirements) is assessed and approved as part of the development consent under the EP&A Act, and rehabilitation activities are then regulated under conditions of the mining title (consistent with the development consent) under the Mining Act.

In recognition of this dual legislative and policy framework there is now a new whole of government project being led by Department entitled "Policy Framework and Action Plan for Mine Rehabilitation". This policy will present a comprehensive, clear policy that set's out the NSW Government's expectations for mine rehabilitation.

As a result, the timeframe for the remaining components of the ORCRR, including new mining lease conditions relating to rehabilitation, codes of practice and guidelines, has been extended to allow for further review to ensure consistency of both projects. In addition, it has now been identified that it is more appropriate that recommendation 4 of the audit report (long term financial assurance mechanism) be considered under the Policy Framework and Action Plan for Mine Rehabilitation. The key justification being that the mechanism may fall outside the *Mining Act 1992*, which is therefore outside the scope of the Audit.

The remainder of the Resources Regulator's ORCRR, as outlined above, have been developed and underwent extensive inter-agency consultation in late 2017. Following this consultation process, these components were then updated and underwent a further detailed legal review. In addition, an independent consultant was then engaged to undertake a full peer review of the reform components.

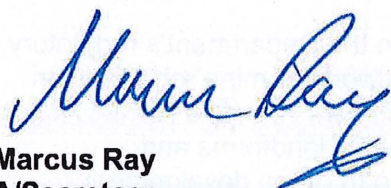
Further inter-agency consultation was undertaken in March 2018 to ensure consistency with the concurrent broader project being facilitated by the Department and to review updates arising from the peer review. The documents have now been finalised following all feedback and will shortly be released for a 3-month industry consultation period. Whilst the consultation period is underway, the Department will be finalising its implementation strategy.

As the implementation strategy is likely to be a complex process, and involve legislative amendment or other regulatory actions to modifying title conditions for all titles for the reforms to take effect, a revised implementation date of 1 March 2019 is now proposed. This is likely to be the start of a staged implementation process to transition all mining sites under the new reforms.

I will be writing to the Auditor-General to report on the Department's progress against the recommendations as well as seek acknowledgment of the revised implementation timeframe, particularly to ensure alignment with the broader rehabilitation project.

If you have any specific questions in regards to this matter, please contact Matthew Newton (Director Compliance Operations – Resources Regulator) on 4063 6444.

Yours sincerely



Marcus Ray
A/Secretary
NSW Department of Planning & Environment

13/07/2018
Encl: Attachment A - IMPLEMENTATION OF RECOMMENDATIONS - Resources Regulator Update 4 July 2018

IMPLEMENTATION OF RECOMMENDATIONS

Department of Planning and Environment

Mining rehabilitation security deposits

RECOMMENDATION	ACCEPTED OR REJECTED	ACTIONS TO BE TAKEN	DUE DATE	STATUS (completed, on track, delayed) and COMMENT	RESPONSIBILITY (Section of agency responsible for implementation)
1 Improve the quality of rehabilitation and closure plans by:	Accepted	Refer to specific actions below	January 2018	<p>Extended</p> <p>Reform Package developed but implementation extended - Items (a) to (c) are being addressed through the Resources Regulator's Operational Rehabilitation - Compliance and Reporting Reforms (ORCRR), which include:</p> <ul style="list-style-type: none"> • new mining lease conditions relating to rehabilitation • new Codes of Practice • new Guidelines <p>The documents have been drafted and released for consultation within government. The ORCRR has been subsequently updated to address agency feedback as well as undergoing detailed peer reviewed by an independent consultant.</p> <p>The documents will shortly be released (July) for a 3-month industry consultation period.</p> <p>The ORCRR are now being informed by the development of the broader DPE</p>	Resources Regulator

					Rehabilitation Policy and Framework Action Plan, the overall timeframe for consultation and implementation has been extended to ensure that both initiatives are consistent. As such, implementation of the ORCRR is scheduled by 1 March 2019 .	
1a	Ensuring plans submitted by mining companies include robust mine rehabilitation and closure risk assessments	Accepted	Ensure plans submitted by mining companies include robust mine rehabilitation and closure risk assessments.	January 2018	Extended – refer to comments at 1. Recommendation will be addressed through the ORCRR and has been included in the following documents: <ul style="list-style-type: none"> • Revised mining lease conditions • Code of Practice: Rehabilitation Management Plan for Large Mines • Code of Practice: Rehabilitation Management Plan for Small Mines 	Resources Regulator
1b	Clarifying the level of detail required in plans at each stage of a mine's operation	Accepted	Clarifying the level of detail required in plans at each stage of a mine's operation.	January 2018	Extended – refer to comments at 1. Recommendation will be addressed through the ORCRR and has been included in the following documents: <ul style="list-style-type: none"> • Code of Practice: Rehabilitation Management Plan for Large Mines • Code of Practice: Rehabilitation Management Plan for Small Mines 	Resources Regulator
1c	Specifying how requirements set under other legislative instruments (e.g. environment protection licences, heritage assets) should be addressed.	Accepted	Specify how requirements set under other legislative instruments (e.g. environment protection licences, heritage assets) should be addressed.	January 2018	Extended – refer to comments at 1. Recommendation will be addressed through the ORCRR and has been included in the following documents: <ul style="list-style-type: none"> • Code of Practice: Rehabilitation Management Plan for Large Mines • Code of Practice: Rehabilitation Management Plan for Small Mines 	Resources Regulator

					<ul style="list-style-type: none">• Code of Practice: ARRFP for Large Mines• Code of Practice: ARRFP for Small Mines• Rehabilitation GIS Portal and associated guideline	
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RECOMMENDATION		ACCEPTED OR REJECTED	ACTIONS TO BE TAKEN	DUE DATE	STATUS (completed, on track, delayed) and COMMENT	RESPONSIBILITY (Section of agency responsible for implementation)
2	Improve assurance that security deposits are sufficient by:	Accepted	Refer to specific actions below			Resources Regulator
2a	Ensuring its new cost calculation tool adequately covers all works needed for rehabilitation and closure	Accepted	Implement new security calculation tool that covers a more extensive range of works associated with rehabilitating a mine site.	January 2018	Complete New Rehabilitation Cost Estimate Tool and associated guidelines released to industry for a phased implementation from 1 July 2017.	Resources Regulator
2b	Increasing the contingency for uncertainties associated with mine rehabilitation and closure, at least until the mining company provides a detailed closure plan	Accepted	Implement new security calculation tool that includes increased contingencies associated with mine rehabilitation and closure.	January 2018	Complete Rehabilitation Cost Estimate Tool implemented on 1 June 2017 has been adapted to include contingency for uncertainties associated with mine rehabilitation and closure.	Resources Regulator
2c	Verifying the cost estimates for a sample of high risk sites annually	Accepted	Verify the cost estimates for a sample of high risk sites annually	January 2018	Complete The Resources Regulator has implemented a quality assurance processes through the review of annual reports and associated inspections to verify cost estimates for high risk sites.	Resources Regulator

2d	Ensuring that when mining companies are required to provide increased security deposits, they do so with minimal delay.	Accepted	Review process for notification and collection of security bonds	January 2018	<p>Complete</p> <p>The Division of Resources & Geoscience's process for collection of security bonds involves a 28 day period to allow a title holder the right to request a Minister's Review of the Assessed Deposit. This is followed by a further 42 day period to allow for a title holder to lodge the security with the Department. Where a title holder fails to lodge a security deposit, the matter is referred to the Resources Regulator to investigate an alleged breach.</p>	Division of Resources and Geoscience & Resources Regulator
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RECOMMENDATION		ACCEPTED OR REJECTED	ACTIONS TO BE TAKEN	DUE DATE	STATUS (completed, on track, delayed) and COMMENT	RESPONSIBILITY (Section of agency responsible for implementation)
3	Enhance oversight of mine rehabilitation by:	Accepted	Refer to specific actions below	January 2018	<p>Reform Package developed but implementation extended - Items (a) to (c) are being addressed through the Resource Regulator's Operational Rehabilitation - Compliance and Reporting Reforms (ORCRR), which include:</p> <ul style="list-style-type: none"> • new mining lease conditions relating to rehabilitation • new Codes of Practice • new Guidelines <p>The documents have been drafted and released for consultation within government. The ORCRR has been subsequently updated to address agency feedback as well undergone detailed peer review by an independent consultant.</p> <p>The ORCRR will shortly be released (July) for a 3-month industry consultation period.</p> <p>As the ORCRR is now being informed by the development of the broader DPE Rehabilitation Policy and Framework Action Plan, the overall timeframe for consultation and implementation has been extended to ensure that both initiatives are consistent. As such, implementation of the reforms is scheduled by 1 March 2019.</p>	Resources Regulator
3a	Developing a protocol to ensure sufficient and	Accepted	<ul style="list-style-type: none"> • Develop and implement a rehabilitation assessment protocol to ensure sufficient 	January 2018	<p>Complete</p> <p>A Rehabilitation Assessment protocol has been developed to ensure effective</p>	Resources Regulator

	adequate site inspections		and adequate site inspections.		regulatory oversight of rehabilitation performance at mine sites. The Regulator has also implemented measures to improve its oversight of rehabilitation as part of its Compliance Blitz campaign in May 2018 across NSW with a key focus being on the standard of rehabilitation practices.	
3b	Ensuring mining companies report performance against rehabilitation targets and environmental changes clearly, including an analysis of long-term surface water and groundwater trends in terms of levels, flow and quality	Accepted	<ul style="list-style-type: none"> Incorporate long-term surface water and groundwater trends in terms of levels, flow and quality within Rehabilitation Objectives and Completion Criteria where they are relevant to specific mining operations. 	January 2018	<p>Extended – refer to comments at 3.</p> <p>As part of the ORCRR, further detail to cover these aspects has been provided within the Rehabilitation Objectives and Completion Criteria template as part of the Code of Practice: Rehabilitation Management Plan for Large Mines. This will provide guidance on the level of specificity required within the mandatory Rehabilitation Objectives and Completion Criteria that will be applied to specific projects under the mining lease (<i>Mining Act 1992</i>). The criteria for rehabilitation surface and groundwater will reflect the obligations as set as part of a development consent under the <i>EP&A Act</i> (e.g. specifically in relation to final voids) and <i>POEO Act</i>.</p> <p>The Rehabilitation Objectives and Completion Criteria set the range of performance measures that need to be monitored and reported against.</p>	Resources Regulator
3c	Improving how it determines the progress and	Accepted	Implement specific aspects of the Resource Regulator's Operational Rehabilitation - Compliance and Reporting Reforms: Specifically:	January 2018	<p>Extended – refer to comments at 3.</p> <ul style="list-style-type: none"> The protocol, dashboard and mining lease conditions will be implemented as 	Resources Regulator

	success of mine rehabilitation		<ul style="list-style-type: none"> • Develop and implement a rehabilitation assessment protocol to ensure sufficient and adequate site inspections. • Develop and implement a Rehabilitation Performance Dashboard to identify areas of best practice as well as identify areas to prioritise regulatory efforts. • Implement a new rehabilitation Geographic Information System (GIS) to receive rehabilitation data from title holders as a means to accurately record and track areas of disturbance and rehabilitation at each site • Improve the enforceability of mining lease conditions to ensure that rehabilitation is undertaken progressively and to the quality to meet legislative obligations 		<p>part of the overall ORCRR as a means to improve existing processes for rehabilitation assessment. The Regulator has already implemented measures to improve its oversight of rehabilitation as part of its Compliance Blitz campaign in May 2018 across NSW with a key focus being on the standard of rehabilitation practices.</p> <ul style="list-style-type: none"> • The GIS Portal has been developed and is being migrated into production. As a transitional arrangement the Portal will be available to industry to upload rehabilitation data from August 2018. It will be mandatory to upload rehabilitation into the Portal when the ORCR has been implemented by March 2019. 	
3d	Developing clear policy and procedures for ensuring a mine cannot be put into 'care and maintenance' indefinitely.	Accepted	<ul style="list-style-type: none"> • Publish information on compliance and enforcement approach to ensure that sites under care and maintenance are regulated in accordance with the Objects of the Mining Act and to ensure rehabilitation obligations are fulfilled. 	January 2018	<p>The development of a policy is an action under the DPE Rehabilitation Policy and Framework Action Plan and will be developed under that project</p> <p>In addition, a published <u>compliance priority</u> for the NSW Resources Regulator was to examine current mines that are not in operation and are unlikely to return to</p>	Resources Regulator and DPE Resources Policy

					operating. This process is underway and has included reminding title holders of their obligations as well as instigating the process for cancellation of title under section 125 of the <i>Mining Act 1992</i> (grounds for cancellation).	
RECOMMENDATION		ACCEPTED OR REJECTED	ACTIONS TO BE TAKEN	DUE DATE	STATUS (completed, on track, delayed) and COMMENT	RESPONSIBILITY (Section of agency responsible for implementation)
4	Collaborate with relevant agencies to establish a financial assurance mechanism, such as a sinking fund, to cover the risk of long-term environmental degradation after mines are closed and security deposits returned.	Accepted	Investigate a financial assurance mechanism to cover long-term unforeseen environmental risks and known residual risks following closure of a mine	January 2018	Extended This has now been listed as an action in the draft DPE Policy Framework and Action Plan (whole of government document), which will be submitted to Cabinet in September 2018 (Work in progress). Implementation date will subject to outcomes of Cabinet process.	DPE Resources Policy

