

## POLICY

# Suspension of mining operations

The NSW Government expects the development of the State's mineral resources to deliver a beneficial financial return to the people of NSW. Mining lease holders are required to carry out the timely and responsible development of the resource and ensure that rehabilitation, environmental monitoring and maintenance activities are managed in accordance with the conditions of the lease.

Schedule 1B clause 7A(1) to the *Mining Act 1992* requires that 'A mining lease is subject to a condition that the holder of the lease may suspend mining operations in the mining area only if the operations are suspended in accordance with the written consent of the decision maker'.

There may be extenuating factors that contribute to a lease holder needing to voluntarily and temporarily suspend mining operations. To suspend operations the lease holder must:

- For suspension for a period of up to 12 months:
  - **Notify the Department** using the relevant form within 30 calendar days of suspending operations.
  
- For suspension for a period of more than 12 months; or
- within two years of a previous suspension; or
- for a suspension less than 12 months where a notification is not received within 30 days:
  - **Obtain written** consent from the Department at least 60 calendar days prior to suspension period being sought.

This policy sets out:

- what consent to suspend mining operations means
- the application process to suspend mining operations
- circumstances that the Department will consider when granting, refusing or revoking consent to suspend mining operations.

## Scope

This policy applies to mining leases granted in New South Wales under the *Mining Act 1992*. It provides clarity about the statutory condition (Schedule 1B, cl 7A(1)) on mining leases that requires the lease holder to obtain written consent to suspend mining operations in the mining area and to only suspend operations in accordance with that consent. This policy does not apply to mining leases for ancillary mining activity or activities only.

## Rehabilitation obligations

This policy does not apply to a lease holder's responsibility to meet progressive rehabilitation and environmental monitoring obligations unless specifically stipulated in the consent to suspend. The Department may consent to a suspension of rehabilitation conditions if it is not reasonably practicable for the rehabilitation activities to be undertaken during the suspension of mining operations.

Lease holders must continue to meet their rehabilitation obligations under Schedule 8A of the Mining Regulation 2016, even when a suspension of mining operations is in effect. If rehabilitation obligations are impacted by the suspension, the rehabilitation management plan and forward program must be updated to show how progressive rehabilitation obligations will be managed during the suspension of mining operations.

## Directed suspensions

This policy does not apply to a suspension by direction under section 240AA of the *Mining Act 1992* or interruptions resulting from serious or imminent environmental or safety incidents which have been notified to the Department.

## Interaction with other consents

A suspension granted under this policy does not extend to any approval or development consent granted under the *Environmental Planning and Assessment Act 1979*, obligations under the *Work Health and Safety Act 2011* and *Work Health and Safety (Mines and Petroleum Sites) Act 2013* or any other licence or approval required for the mining operation.

It is the responsibility of the lease holder to liaise with the relevant consent authority to determine whether the suspension of mining operations will trigger a requirement to modify a development consent or any other approval.

## Consent to suspend mining operations

Under the Mining Act 1992, the lease holder can only suspend mining operations with the written consent of the Department. Without consent, the suspension of mining operations is a breach of the statutory conditions of a lease.

If the lease holder is also the mine operator under the WHS laws then the notification of suspension may also be taken to be a notification under clause 129(1)(b) of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 provided that the information required is included. Where the lease holder is not the operator a separate notification must be submitted by the operator. Notification must still be provided upon resumption of mining operations.

## Suspension for up to 12 months

A lease holder who intends to suspend mining operations for a period of up to 12 months must notify the Department within 30 calendar days of suspending operations using the relevant form.

A notification that meets the requirements and includes all the required information, will be taken to constitute written consent for the suspension of operations up to a maximum of 12 months from the commencement of the period of The Department will acknowledge the receipt of a notification. If a notification does not meet the requirements or does not include all required

information, then consent is deemed not to have been granted and the lease holder will be informed by email and will be required to re-submit the notification.

A notification to suspend mining operations cannot be made within two years of the end of a previous suspension. If the lease holder wishes to suspend within two years of a previous suspension, the lease holder will need to apply for written consent in accordance with the following section.

## **Suspension for up to three years or where 30-day notification period is not met**

A lease holder must obtain written consent to suspend mining operations for a period of more than 12 months. A lease holder must also obtain written consent for a period of less than 12 months if they did not notify the Department of the suspension within the required 30-day period.

The application for written consent must be made on the relevant application form at least 60 calendar days before the start of the suspension period being sought. The maximum length of time that the Department will grant a single consent to suspend is three years (inclusive of any period of up to 12 months under the notification provisions above).

The consent to suspend mining operations takes effect on the date specified in the written consent and subject to any requirements specified in the written consent.

After three years of suspension, a lease holder may apply for a further period of suspension of mining operations. In this instance the Department may undertake a review that includes an onsite inspection and economic review and other studies in order to determine whether to grant a subsequent suspension. This review may be subject to additional fees to cover the Department's costs associated with the extension request.

## **Suspension following a recent suspension**

A lease holder must also obtain written consent to suspend mining operations if the suspension occurs within two years of a previous suspension of mining operations.

This includes instances where a mine has been suspended under either the notification or written consent pathways but does not include non-voluntary suspensions. Lease holders must apply using the relevant application form at least 60 days before the start of the suspension period being sought.

## **Application**

A notification or application for consent to suspend mining operations must be made on the relevant form and include the following information:

- reason for the proposed suspension of mining operations
- length of suspension, including start date and recommencement date
- how the lease holder intends to address the factors that led to the need to suspend mining operations
- any issues that may delay progressive rehabilitation as required under Schedule 8A of the Regulation and details on how progressive rehabilitation obligations will be addressed if changes to the rehabilitation management plan are required

- the amount of the resource remaining to be extracted
- details of any previous suspensions.

## Assessment of applications to suspend

### Guiding Principles

In considering an application to suspend mining operations for more than 12 months, the Department will be guided by the objects of the *Mining Act 1992*, which are to encourage and facilitate the discovery and development of mineral resources in New South Wales, having regard to the need to encourage ecologically sustainable development and include the need to:

- recognise and foster the significant social and economic benefits to New South Wales that result from the efficient development of mineral resources
- ensure an appropriate return to the State from mineral resources
- ensure effective rehabilitation of disturbed land and water.

### Extenuating factors in suspension decisions

To give effect to the above objects, the Department will need to be satisfied that extenuating factors exist to warrant the voluntary and temporary suspension of mining operations for an extended period. Examples of the types of extenuating factors that the Department may consider in granting a suspension of mining operations include:

- protracted and complex land access matters
- unforeseen events (eg. 'force majeure' events)
- the mining lease in question is part of a broader project and suspension is necessary as a result of other activities or matters impacting the project as a whole.
- significant commercial or economic factors
- unanticipated delays in approvals
- the operation of a lawful direction or order.

The Department will **not** consider the following matters or events to be extenuating factors in considering whether to grant consent:

- resource depletion or exhaustion
- delaying mine closure
- postponement of progressive rehabilitation.

### Other considerations

In addition to the above, the Department will consider the following when determining whether to grant consent:

- any previous periods of suspension of mining operations related to the lease or associated leases
- whether a requested suspension period exceeds the expiry date of the lease

- any matters that may impact or prevent recommencement of mining operations
- the outcomes of any site inspections
- commercial viability or resource assessment reports

The Department may grant a written consent for a shorter period than the period requested if the reason for the proposed suspension does not justify a longer period.

The Department will publish on its website details of mines with suspended mining operations including details of the lease holder, the mine, the length of suspension and any requirements specified in the consent.

## Notification of consent

For notifications of suspension for up to 12 months, the department will send an email acknowledgement which, alongside the notification, is taken to be written consent.

For applications for consent to suspend, the department will provide written consent to the applicant.

The written consent may include conditions of consent.

## Refusing consent

An application to suspend mining operations may be refused if it is incomplete, if it does not meet requirements or if the Department is satisfied that the reasons for suspension do not support the objects of the *Mining Act 1992*. A refusal may occur for any reason where the granting of consent would be contrary to the objects of the Act.

In such circumstances a lease holder will be informed that the consent has not been granted. An applicant may be required to re-apply and address any issues that are identified.

## Revoking consent

The Department may revoke a consent to suspend mining operations at any time if there is a breach of any conditions of the consent for suspension, or if there is a change in the factors that led to the suspension. If consent is revoked, the lease holder will be required to recommence mining operations. The lease holder will be notified by the Department of a suspension revocation at least 30 days before re-commencement of mining operations is required.

## Recommencement of mining operations

The lease holder must recommence mining operations at the end of the period specified in the consent or obtain a written consent to continue the suspension of mining operations. Compliance action can be taken in the lease holder does not recommence mining operations.

If a lease holder wishes to proceed to closure during a period of suspension the normal mine closure requirements will apply. A lease holder may begin closure processes whilst in a suspension period.

## Fees and charges

A fee may apply for applications for written consent to suspend mining operations for a period of more than 12 months, or within two years of a previous suspension. If applicable the fee will be set by the Regulations.

Further charges may apply for applications seeking consent to suspend for additional cumulative periods in excess of three years. In these instances, the Department may undertake further studies, such as commercial viability or resource assessments and site inspections, which will be charged to the applicant on a cost recovery basis.

© State of New South Wales through Regional NSW 2022. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2022) and may not be accurate, current or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication. **RDOC22/12063**