

Definitions

In this lease:

- (a) A reference to a code or guideline is a reference to that document as amended or replaced from time to time, and
- (b) Words have the meaning given to those terms in the *Mining Act 1992* unless otherwise defined below:

Change in effective control of the lease holder means any occurrence which results in any person, not being a related body corporate of the lease holder, newly being in one or more of the following positions:

- (a) having the capacity to appoint or control more than 50% of the number of directors of the lease holder's board;
- (b) being entitled to exercise (directly or indirectly) more than 50% of the votes entitled to be cast at any general meeting of the lease holder; or
- (a) holding more than 50% of the issued share capital (other than shares issued with no rights other than to receive a specified amount in distribution) of the lease holder.

Environmental incident notifications and reports means any notifications and reports to be provided to relevant authorities under Part 5.7 or Part 5.7A of the *Protection of the Environment Operations Act 1997*.

Foreign acquisition of substantial control in the lease holder means any occurrence which results in a foreign party, not being a related body corporate of the lease holder, newly being in one or more of the following positions:

- (a) having the capacity to appoint or control 20% or more of the number of directors of the lease holder's board;
- (b) being entitled to exercise (directly or indirectly) 20% or more of the votes entitled to be cast at any general meeting of the lease holder; or
- (a) holding interests in 20% or more of the issued share capital (other than shares issued with no rights other than to receive a specified amount in distribution) of the lease holder.

National park, regional park, historic site, nature reserve, karst conservation reserve and Aboriginal area have the meaning given to those terms in the *National Parks and Wildlife Act 1974*.

Related Body Corporate has the same meaning given to that term in the *Corporations Act 2001 (Cth)*.

Relevant authorities has the meaning given to that term in section 148 of the *Protection of the Environment Operations Act 1997*.

Work Program means the approved work program referred to in Schedule 5 of this lease, as amended from time to time with the approval of the Minister.

General conditions

Work Program

1. The lease holder must carry out the operations, and any other activities, described in the Work Program and comply with any commitments in relation to the conduct of operations specified in the Work Program, as for the time being in force, in respect of this lease.

Community consultation

2. The lease holder must carry out community consultation in relation to the planning and conduct of activities under this lease in accordance with the *Exploration Code of Practice: Community Consultation* (March 2016).

Protection of the environment

3. The lease holder must prevent, or if that is not reasonably practicable, minimise so far as is reasonably practicable, any harm to the environment arising from activities carried out under this lease.

Security

4. The lease holder must provide a security deposit to secure funding for the fulfilment of obligations under this lease (including obligations that may arise in the future) as follows:
 - (a) Amount: \$ **[Security amount entered here]**
 - (b) Lease Holder's entitlement to interest: none.

Rehabilitation

5. The lease holder must carry out rehabilitation of all disturbance caused by activities carried out under this lease in accordance with the requirements in Part B of the *Exploration Code of Practice – Rehabilitation* (July 2015) to the satisfaction of the Minister.

Environmental incident reporting

6. The lease holder must provide environmental incident notifications and reports to the Secretary no later than 7 days after those notifications and reports are provided to relevant authorities under the *Protection of the Environment Operations Act 1997*.

Annual Activity Reporting

7. Unless otherwise approved by the Secretary, the lease holder must submit annual activity reports prepared in accordance with the *Exploration Guideline: Annual Activity Reporting for Prospecting Titles* (July 2015) at the following times:
 - (a) Annually, within one calendar month following the grant anniversary date of this lease
 - (b) On any other date or dates directed by the Secretary in writing; and
 - (c) Within one calendar month following the cancellation or expiry of this lease.

Change in control

8. If the lease holder is a corporation, the lease holder must notify the Secretary in writing if any of the following occur:
- there is a change in effective control of the lease holder; or
 - there is a foreign acquisition of substantial control in the lease holder.

The notification must be given as soon as practicable and no later than 30 days after the change or acquisition occurs.

Notification is not required where a change in effective control of the lease holder, or a foreign acquisition of substantial control of the lease holder, occurs as a result of the acquisition of shares or other securities on a registered stock exchange.

Additional conditions

[Either 'Nil' or Special/Additional Conditions will be included for the specific lease if relevant]

Landholder Liaison Program and Property Acquisition Strategy

9. Upon the grant of the lease, the lease holder must establish a landholder liaison program, which must include procedures for addressing all landholder inquiries (**Landholder Liaison Program**).

Where it is proposed that the lease area will be used in future for the development of open cut mining operations, the lease holder must establish a strategy for the acquisition of property within the lease area from any land owners who:

- request in writing that the lease holder acquire their land; and
- can demonstrate hardship and, despite bona fide attempts to sell, have been unable to sell their land as a consequence of the proposed open cut mining, (**Property Acquisition Strategy**).

Copies of both the Landholder Liaison Program and the Property Acquisition Strategy must be provided to all landowners within the lease area and to the Executive Director Assessments and Systems at the Department.

Where such hardship and bona fide efforts to sell are established under the terms of this condition or agreed between the parties, the lease holder must be prepared to purchase the landowners land in accordance with this condition.

Where agreement cannot be reached as to the demonstration of hardship and bona fide efforts to sell, either the lease holder or the landowner may refer the matter to the Secretary for resolution.

Upon receiving such a referral, the Secretary shall appoint an independent arbitrator from the Minister's panel of arbitrators appointed under the *Mining Act 1992* (NSW) to:

- consider submissions from both parties,
- determine whether hardship exists and bona fide attempts to sell have been made, and
- prepare a summary report for the Secretary.

The arbitrator's costs are to be borne by the lease holder.

Land acquisition

Within three months of receiving a written request from a landowner within the lease area, or within three months of receiving a copy of an arbitrator's report confirming hardship and bona fide attempts to sell, the lease holder must make a binding written offer to the landowner based on:

- (a) the current market value of the landowner's interest in the land, which is within the lease area, at the date of the written request, as if the land was unaffected by the potential development of open cut mining operations within the lease area, having regard to the:
 - existing and permissible use and amenity of the land,
 - presence of improvements on the land and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date, and
- (b) the reasonable costs associated with the landowner obtaining legal and expert advice for determining the acquisition price of the land and the terms upon which it is to be acquired.

If, within 28 days of the lease holder making an offer to acquire a landowner's land in accordance with this condition, the lease holder and landowner cannot agree on the acquisition price and/or the terms upon which the land is to be acquired, then either party may refer the matter to the Secretary for resolution.

Upon receiving such a referral, the Secretary shall request the President of the NSW Division of the Australian Property Institute (**API**) to appoint a qualified independent valuer to:

- consider submissions from both parties;
- establish a fair market value for the land and determine reasonable costs and compensation for the acquisition, in accordance with paragraphs (a)-(b) above; and
- recommend appropriate fair and reasonable terms of acquisition.

The appointed valuer is to provide a report and explanation of their valuation, determinations and proposed terms of acquisition to the Secretary, the lease holder and the landowner.

The Secretary shall consider the valuation, determinations and terms of acquisition proposed by the independent valuer and advise the parties that:

- (a) the independent valuer's report is fair and reasonable, in which case the lease holder must make a written offer to purchase the land in accordance with the terms set out in the independent valuer's report and at a price no less than that set in the report within 14 days, or
- (b) that the independent valuer's report is not fair and/or reasonable, in which case a further independent valuation and determination will be undertaken in accordance with this condition and the Secretary will duly request a further appointment by the API.

If the landowner has not accepted a written offer duly made by the lease holder under this condition within 6 months of receipt of the offer, the lease holder's obligation to acquire the land shall cease, unless otherwise agreed by the Secretary.

The lease holder shall bear the full costs of any independent valuer's valuation, determination and report under this condition.

If the lease holder and landowner agree that only part of the land shall be acquired, the lease holder shall pay all reasonable costs associated with obtaining approval from the relevant consent authority for any plan of subdivision (where permissible), and registration of the plan at the Office of the Registrar-General.

Definitions:

Hardship: conditions that are difficult to endure. Hardship may be caused by illness, age, financial stress or adverse personal circumstances.

Bona fide attempts to sell: - listing of the property, which is within the lease area, with a local Real Estate or Stock and Station Agent, for a period of at least six months at a price which is in line with the current market for the property, as if it was unaffected by potential future open cut mining operations within the lease. The listing must have occurred during the term of the assessment lease or during a twelve month period immediately prior to the grant of the assessment lease.

Landowner: has the meaning given to the term 'owner' in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Market value: means 'market value' as defined in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Secretary: means the Secretary administering the *Mining Act 1992*.

© State of New South Wales through Regional NSW 2022. The information contained in this publication is based on knowledge and understanding at the time of writing (February 2022). However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Regional NSW or the user's independent adviser.