

Authorisations	Exploration Licence No. 8905 (Act 1992) (EL 8905)
Licence Holder	NBH Resources Pty Ltd (ACN 141 901 939)
Issue	Omission of Condition No. 13 Mandatory Audit Condition
Legislation	Clause 12 of Schedule 1B of the <i>Mining Act 1992</i>
Decision maker	David Muxlow A/ Executive Director, NSW Resources Regulator Department of Regional NSW

DECISION TO VARY AN AUTHORISATION

As authorised by Clause 12 of Schedule 1B of the *Mining Act 1992* (**Act**), I David Muxlow, having delegated authority from the Minister, have decided to vary (omit) Condition No. 13 Mandatory Audit Condition currently imposed on EL 8905.

The decision takes effect from **16 October 2023**.

REASONS FOR DECISION

Legislation – Variation of authorisation

1. Clause 12(1) of Schedule 1B of the Act provides that the relevant decision-maker may vary an authorisation (including the conditions of an authorisation).
2. Clause 12(2)(c) of Schedule 1B of the Act provides that a variation of an authorisation may include the omission of a condition.
3. Clause 12(3) of Schedule 1B of the Act enables the authorisation to be varied on the initiative of the relevant decision-maker.
4. Clause 12(4) of Schedule 1B of the Act enables the authorisation to be varied at any time during its currency.

5. Clause 12(5) of Schedule 1B of the Act requires the decision-maker to:
 - (a) give the holder of the authorisation notice of the decision, and
 - (b) invite the making of submissions to the decision-maker about the proposed decision and provide at least 28 days to make a submission, and
 - (c) take into consideration any such submission after the submission period has expired.
6. Clause 12(6) of Schedule 1B of the Act requires the decision to be given in writing to the licence holder.
7. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person.
8. The Minister has delegated the functions to vary an authority under Clause 12(1) of Schedule 1B of the Act to the Executive Director of the NSW Resources Regulator (**Regulator**).

Background

9. NBH Resources Pty Ltd (ACN 141 901 939) is the holder of EL 8905.
10. Condition No. 13 Mandatory Audit Condition was imposed on EL 8905 at the time of grant, on 29 October 2019 and continues to have effect.
11. NBH Resources Pty Ltd has failed to submit to the Regulator audit reports due annually by 1 March since grant.
12. NBH Resources Pty Ltd has previously sought exemptions for Condition No. 13 Mandatory Audit Condition, citing issues with engaging a suitable auditor.
13. In late 2022, the Regulator reviewed the Mandatory Audit Condition applied across various authorisations. The Regulator identified that more clarity around audit requirements was required.
14. In correspondence dated 5 October 2022, the Regulator issued a notice of proposed variation of EL 8905 to amend Condition No. 13 Mandatory Audit Condition.
15. NBH Resources Pty Ltd provided lengthy email submissions dated 18 October 2022 and 30 November 2022 that focused on allegations against NBH Resources that were investigated in 2019 and subsequently heard and finalised in Broken Hill Local Court in 2020. In addition, the submissions sought clarification regarding regulatory requirements.

16. Following review of the submissions, the Regulator proposed an alternative option to omit the mandatory audit condition and the Regulator conduct an audit of EL 8905 as part of an existing exploration audit program.

Representations

17. In a letter dated 15 August 2023, the Regulator wrote to NBH Resources Pty Ltd inviting submissions in response to the proposed decision to omit the mandatory audit condition imposed on EL 8905.
18. Email submissions were received on 17 August 2023 and 7 September 2023 indicating support for the omission of the mandatory audit condition.
19. It is noted that responses again included concerns regarding historical matters that have previously been investigated.

Considerations and findings

20. I am satisfied that the requirements of clause 12(5) of Schedule 1B to the Act have been met and that NBH Resources Pty Ltd were provided an opportunity to make a submission in response to the proposed decision.
21. I note that NBH Resources Pty Ltd response indicated support for omitting Condition No. 13 Mandatory Audit Condition.
22. I note the Regulator has repeatedly responded to the historical matters raised by NBH Resources Pty Ltd in their submissions and I do not intend on responding to these matters further in making this decision.
23. I also note the Regulator will schedule an audit within the exploration compliance audit program to assess NBH Resources Pty Ltd's compliance with regulatory obligations, and effectiveness of systems and processes in place to achieve compliance and otherwise provide guidance and education with respect to their obligations under the Act and Regulation.
24. I am satisfied that exploration activities can be appropriately regulated through the conditions imposed on EL 8905. This includes compliance with codes of practice for environmental management, rehabilitation and community consultation.
25. This decision reflects the Regulator's desire to reduce regulatory burden whilst ensuring effective regulatory outcomes.

Conclusion

26. Based on the material before me, I have decided to omit Condition No. 13 Mandatory Audit Condition.
27. This decision takes effect from **16 October 2023**.

Date of decision: **16 October 2023**



David Muxlow

A/ Executive Director

NSW Resources Regulator

Note: In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator's website: www.resourcesregulator.nsw.gov.au