

FACT SHEET

Minister's review of assessed security deposit

DECEMBER 2020

1. What is a Minister's review?

When authorisations¹ under the *Mining Act 1992* (Mining Act) are granted, the Minister may impose conditions that require the authorisation holder (the holder) to provide and maintain a security deposit to secure funding for the fulfilment of obligations under the authorisation, including obligations that may arise in the future. Such conditions are referred to as a 'security deposit' condition.

The Secretary of the Department of Regional NSW (the Department) is responsible for assessing the amount of the security deposit required for each authorisation to ensure that the deposit covers the full cost of rehabilitation in the event of default by the holder. This is referred to as the 'assessed deposit' or 'assessed security deposit'.

Where a security deposit condition is imposed, the holder of the authorisation may, within 28 days, formally request a review by the Minister of the Secretary's assessed security deposit under section 261BD of the Mining Act.

2. How are applications made?

Applications for review of the assessed security deposit by the Minister must be made utilising [Form AD17 Application for review of assessed security deposit](#). The application form can be downloaded from the Resources Regulator's website at: <https://www.resourcesregulator.nsw.gov.au/environment/forms>

The application must be lodged within 28 days after notice is given to the holder of the authorisation of the assessment of the amount of the security deposit².

The application should be lodged via email to nswresourcesregulator@service-now.com.

Alternatively, the application can be lodged as follows:

¹ means an exploration licence, an assessment lease or a mining lease.

² Section 261BD of the *Mining Act 1992*.

- By mail, to NSW Resources Regulator, PO Box 344, Hunter Region Mail Centre NSW 2310.
- In person, at NSW Resources Regulator, 516 High Street, Maitland, NSW.

3. What should be included in an application?

The application must include the information outlined in [Form AD17 Application for review of assessed security deposit](#).

In particular, the application must contain the grounds for a review of the assessment including a detailed rehabilitation cost estimate prepared using the Department's current [Rehabilitation Cost Estimation Tool](#) in support of the application.

The following documents should also be reviewed when completing the application:

- [Policy ESP1: Rehabilitation security deposits](#)
- [Guideline ESG1: Rehabilitation Cost Estimation](#)
- [Rehabilitation Cost Estimation Tool Handbook](#).

4. How will my application be assessed?

4.1. Administrative assessment

Once the application is received, the NSW Resources Regulator will conduct an administrative review to determine whether the application is 'administratively complete'. This review will include the following:

- confirming the application was received within the prescribed 28 calendar day period
- ensuring the correct authorisation(s) have been included
- confirming the application includes appropriate grounds for why the review is being requested, including addressing the reasons given by the Secretary in the notice of assessment
- ensuring a current rehabilitation cost estimate has been included
- ensuring the application form is signed by either the authorisation holder or their authorised representative.

If the application is deemed to be 'administratively incomplete', the holder will be formally notified and requested to provide relevant additional information.

If the application is deemed to be 'administratively complete', the holder will be formally notified that the application has been accepted for further assessment.

4.2. Technical assessment

Once determined to be 'administratively complete', a detailed technical assessment will be undertaken including:

- reviewing the application and associated documentation
- reviewing the rehabilitation obligations relating to the authorisation(s) concerned
- determining the estimated costs for fulfilling these obligations.

This assessment will:

- a. review the scope of rehabilitation activities including in the original security deposit calculation
- b. review whether the rehabilitation liability has been calculated on the period of maximum disturbance or a snapshot in time
- c. ensure consistency with the Department's current rehabilitation cost estimation tool rates
- d. review the adequacy of any alternative rates provided by the holder (i.e. from a third-party supplier/consultant/quantity surveyor)
- e. review whether contingencies for potential uncertainties are sufficient
- f. ensure the obligations associated with undertaking any section 240 directions and/or non-compliance orders have been accounted for
- g. review whether the original 'assessed deposit' was appropriate to address fulfilment of obligations under the authorisation, including obligations under the authorisation that may arise in the future. Obligations under the authorisation that may arise in the future may include:
 - future disturbances caused by planned activities in the Mining Operations Plan (MOP)/Rehabilitation Management Plan period
 - existing or probable future subsidence impacts (on or off-title)
 - existing or probable future environmental impacts (on or off-title)
 - future disturbances caused by proposed activities in an approved exploration activity or program

- necessary activities to give effect to a direction under s.240 direction.

Following completion of the detailed technical assessment, a report will be prepared for the consideration of the Mine Rehabilitation Review Committee.

4.3. Mine Rehabilitation Review Committee

The Mine Rehabilitation Review Committee is made up of senior officers from the Department of Planning, Industry and Environment, the Environment Protection Authority and the NSW Resources Regulator.

The Committee will consider the application lodged, together with the assessment report. The Committee will then make a recommendation to the Minister (or delegate).

4.4. Minister's decision

The Minister administering the Mining Act (or delegate) will consider all relevant information including:

- the application lodged by the holder
- the technical assessment findings
- the recommendations of the Review Committee.

The Minister may then:

- affirm the Secretary's assessment of the security deposit,
- amend the Secretary's assessment of the security deposit, or
- set aside the Secretary's assessment and substitute a new security deposit assessment.

5. Could the assessed security deposit be increased by the Minister?

Yes. In some instances, the Minister may decide that the Secretary's assessment of the security deposit (i.e. the security deposit amount which is being reviewed) is not sufficient for the fulfilment of obligations under the authorisation. In such cases, the Minister's review may result in an increase in the security deposit that needs to be provided by the holder.

6. Will I be notified of the decision?

Yes. You will be provided with written notification of the Minister's decision, including reason(s) for the decision.

7. What happens after a decision is made?

The determination of the application by the Minister may result in a variation to the conditions of the authorisation. This may include:

- imposing/varying the security deposit condition on an authorisation to reflect the amount resulting from the Minister's review
- requiring the holder to provide the required security deposit within 42 days of the receipt of the modified authorisation instrument (or endorsement schedule relating to the security deposit condition)
- ensuring the holder maintains the required security deposit to secure funding for the fulfilment of obligations under the authorisation, including obligations under the authorisation, or authorisations, that may arise in the future.

We may initiate non-compliance action if the assessed security deposit is not received by the due date.

Additional information

For further information, contact the Resources Regulator at nswresourcesregulator@service-now.com

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