

Guideline

Rehabilitation Cost Estimate

Mining Act 1992 and Petroleum (Onshore) Act 1991

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August 2020	3	DOC20/670478 Updated branding, department name

Amendment schedule		
August 2021	4	<p>Renamed as “Guideline: Rehabilitation cost estimate” to reflect wording in the Mining Regulation 2016 and to remove numbering associated with former Environmental Sustainability Unit (formerly named “ESG1: Rehabilitation cost estimation guidelines”).</p> <p>Removed reference to ‘Mine Closure Plan’ in Section 3.4.1 as mine closure details are incorporated into the rehabilitation management plans already referenced.</p> <p>Updated terms and glossary to be consistent with the July 2021 operational rehabilitation reforms as set out in Schedule 8A of the Mining Regulation 2016.</p> <p>Clarified that a rehabilitation cost estimate for applications for renewal or transfer of a title requires the provision of an estimate of the rehabilitation costs, in the form of a single dollar figure for each relevant title, prepared and calculated in accordance with the Rehabilitation cost estimate guidelines (these guidelines). Detailed costings and associated calculations to comprise the rehabilitation cost estimate is not required upon renewal or transfer, unless specifically requested by the department.</p> <p>Corrected formatting errors.</p>
July 2024	5	<p>Updated template and department name (now Department of Primary Industries and Regional Development).</p> <p>Added clarification in section 3.5.2 that the RCE tool does not apply to the sealing of petroleum wells associated with exploration and production activities under the <i>Petroleum (Onshore) Act 1991</i>.</p>

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1. Introduction

1.1. Background

The NSW Resources Regulator, within the Department of Primary Industries and Regional Development, is responsible for the regulation of mineral and coal exploration and mining pursuant to authorisations granted under the *Mining Act 1992* and petroleum exploration and production operations pursuant to petroleum titles granted under the *Petroleum (Onshore) Act 1991*. Both Acts allow the Minister (or delegate) to impose and vary security deposit conditions on authorisations and petroleum titles (referred to collectively in this document as titles) to cover the obligations of the title holder. The security deposit is required for the fulfilment of obligations under the title, including those related to rehabilitation, and obligations that may arise in the future.

Title holders are required to submit a rehabilitation cost estimate (RCE) whenever a potential change in rehabilitation liability occurs and at other key points throughout the tenure of a title. The RCE is used by the department to assist in determining the amount of the security deposit required for the title.

The *Rehabilitation security deposits policy* requires that the security deposit covers the government's full costs in undertaking rehabilitation in the event of default by the title holder. This requirement is intended to minimise potential liabilities to the state in the event that the title holder defaults on their rehabilitation obligations.

1.2. Purpose

This guideline has been prepared to assist the NSW exploration, mining and petroleum production industries in the preparation of a RCE. These guidelines include information about:

- the legislative requirements
- how government assesses and administers security deposits, and
- how to assess rehabilitation risks and liabilities and prepare a RCE.

1.3. Legislative context

The objects of the *Mining Act 1992* (section 3A) are to encourage and facilitate the discovery and development of mineral resources in NSW, having regard to the need to encourage ecologically sustainable development, and in particular:

- a. to recognise and foster the significant social and economic benefits to NSW that result from the efficient development of mineral resources, and
- b. to provide an integrated framework for the effective regulation of authorisations for prospecting and mining operations, and
- c. to provide a framework for compensation to landholders for loss or damage resulting from such operations, and
- d. to ensure an appropriate return to the State from mineral resources, and
- e. to require the payment of security to provide for the rehabilitation of mine sites, and
- f. to ensure effective rehabilitation of disturbed land and water, and

- g. to ensure mineral resources are identified and developed in ways that minimise impacts on the environment.

Similarly, the objects of the *Petroleum (Onshore) Act 1991* (section 2A) are to encourage and facilitate the discovery and development of petroleum resources in NSW, having regard to the need to encourage ecologically sustainable development, and in particular:

- a. to recognise and foster the significant social and economic benefits to NSW that result from the efficient development of petroleum resources, and
- b. to provide an integrated framework for the effective regulation of titles for petroleum prospecting and mining, and
- c. to provide a framework for compensation to landholders for loss or damage resulting from such operations, and
- d. to ensure an appropriate return to the State from petroleum resources, and
- e. to require the payment of security to provide for the rehabilitation of sites damaged or affected by such operations, and
- f. to ensure effective rehabilitation of disturbed land and water, and
- g. to ensure petroleum resources are identified and developed in ways that minimise impacts on the environment.

Under Part 12A of the *Mining Act 1992* and Part 10A of the *Petroleum (Onshore) Act 1991*, the Minister has powers to impose conditions on titles that require the title holder to provide and maintain a security deposit to secure funding for the fulfilment of obligations under the title, including obligations under the title that may arise in the future.

This includes:

- any obligations under the conditions of a title
- any obligations under Part 11 of the *Mining Act 1992* or obligations under Part 6 of the *Petroleum (Onshore) Act 1991*, which both relate to the protection of the environment.

The department is responsible for determining the 'assessed deposit' on behalf of the Secretary (section 261BC *Mining Act 1992* and s.106E *Petroleum (Onshore) Act 1991*).

1.4. Compliance requirements

The title holder must provide and maintain a security deposit to secure funding for the fulfilment of obligations authorised under a title, including obligations that may arise in the future.

The security deposit must be submitted to the department before the commencement of any operations authorised under the title and will be held by the department until the obligations are fulfilled. The security deposit may be held beyond the time when the title expires or is cancelled, should the obligations not yet be fulfilled.

The department may commence enforcement action if the title holder fails to provide the required security deposit within the required timeframe.

1.5. Review

This guideline will be reviewed after the first year of publication, and then every five years. The effectiveness of the guideline will be monitored on an ongoing basis.

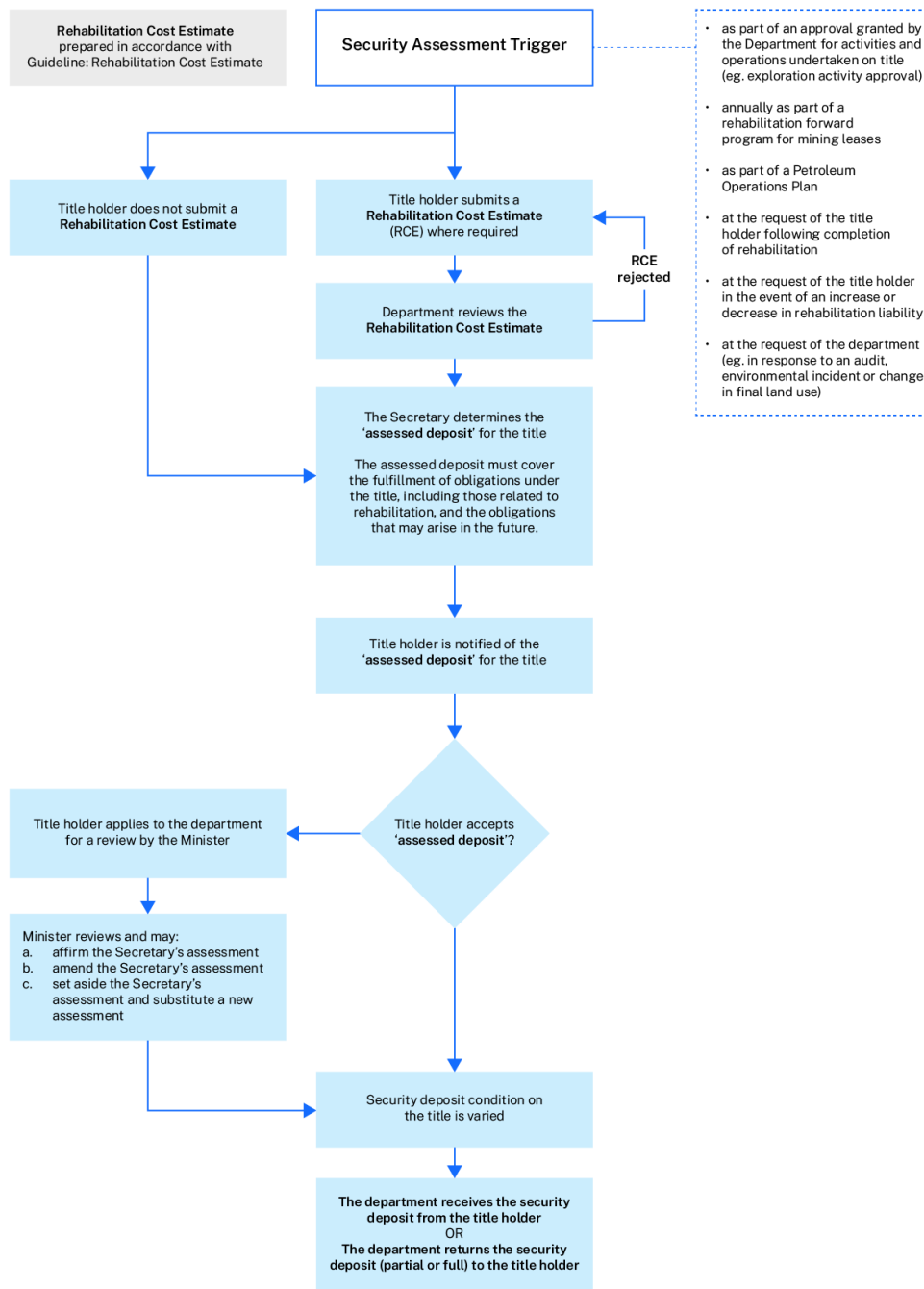
1.6. Contact details

All enquiries should be lodged by email at: nswresourcesregulator@service-now.com

1.7. Flowchart

The security review process is summarised in the Figure 1 below.

Figure 1. A simplified flowchart of the security review process



2. Security deposits

2.1. Assessing and setting the security deposit

2.1.1. Minimum deposit

The amount of the security deposit that may be required by a security deposit condition is:

- the assessed deposit for the title as at the date the decision-maker imposes or varies the condition, or
- if there is no assessed deposit, the minimum deposit for the title as at the date the decision-maker imposes or varies the condition (Part 12A *Mining Act 1992* and Part 10A *Petroleum (Onshore) Act 1991*).

The minimum deposit for a title is set pursuant to clause 93 of Mining Regulation 2016 and clause 49 of Petroleum (Onshore) Regulation 2016 as follows:

- \$200 for a small-scale minerals title
- \$1,000 for an environmental assessment permit (under the *Mining Act 1992* only), and
- \$10,000 for any other title.

2.1.2. Security deposit assessment

The title holder is required to submit a RCE to the department whenever a potential change in rehabilitation liability occurs. The security deposit assessment carried out by the department is based on the RCE provided by the title holder. If the RCE is determined to be inadequate following assessment by the department, it may be rejected and the title holder will be required to submit a revised RCE.

The department advises the Secretary of the outcomes of the security deposit assessment and may recommend that the amount of the required security deposit be varied. The recommendation may be the same as the RCE or it may be higher or lower depending on the department's assessment of the likely rehabilitation costs and the nature or circumstances of the operation and any associated risks.

After an assessment is made, the Secretary must give written notice of the assessment to the title holder. This notice must set out the reasons for the assessment and advise the title holder of their right to apply for a review by the Minister (refer to Section 2.2).

The security deposit condition on the title will then be varied to align with the assessed deposit determination and the title holder will be informed in writing of the requirement to lodge the new security deposit within a set timeframe. The security deposit is to be lodged with the department prior to carrying out any activities authorised by the title.

Refer to Section 3 for further information about estimating rehabilitation liability for a title and submitting a RCE.

2.2. Review by the Minister

The title holder has a right of review by the Minister of the ‘assessed deposit’ (section 261BE *Mining Act 1992* and section 106G *Petroleum (Onshore) Act 1991*).

This increases the procedural fairness and transparency of the security review process.

An application for Minister’s review is to be made in the prescribed form, which is available on the department’s website.

The title holder must document reasons why the original determination was considered to be in error or unjustified. The application for review must be made in writing and lodged with the Secretary within 28 days of the date of the original assessment notice. A new RCE should accompany the request for the review.

The review, if conducted by a delegate of the Minister, will not be conducted by the same person who made the initial assessment.

Following the new assessment, the Minister may agree with the Secretary’s original assessment or may recommend an alternative amount commensurate with the assessed rehabilitation liability determined by the Minister (or delegate).

The security condition on the title will then be varied to align with the Minister’s security assessment and the title holder will be informed in writing of the requirement to lodge the new security deposit within a set timeframe.

2.3. Form of the security deposit

The acceptable form of the security deposit is generally prescribed by the security condition on title. Section 261D of the *Mining Act 1992* also sets out various options with regard to the form of the security deposit for mineral and coal titles. Security deposits are usually required to be submitted in one of the following forms:

- a bank guarantee¹
- cash
- a bond, or
- another form (such as an insurance policy) that the Secretary considers appropriate and specifies in the security deposit condition.

¹ The security deposit in the form of a deed is accepted by the department from both Australian Prudential Regulation Authority (APRA) and non-APRA supervised deposit taking institutions. Where a financial institution is not subject to prudential oversight by APRA (e.g. merchant banks) then the following minimum requirements should be met:

- the financial institution should have a credit rating of “A” or above (as assessed by Standard & Poors) or
- “A2” or above (as assessed by Moody’s Investors Service) or “A” or
- above (as assessed by Fitch Ratings); and the total value of performance bonds held by the department with that institution should not exceed 10 per cent of the institution’s net assets.

The department is willing to consider other forms of security deposit proposed by industry, provided that alternative schemes meet the following requirements:

- no additional risk to the NSW Government
- funds are available when required by the Minister
- the security deposit bond is irrevocable, and
- maintenance of the deposit is not dependent on subsequent actions by the title holder (e.g. periodic insurance instalments).

2.4. Release of security deposit

Security deposits will be released or revised downwards when the Minister or Secretary (depending upon the conditions of the title) is satisfied that the title holder has demonstrated that the relevant rehabilitation obligations (or other relevant obligations under the title) have been met and the rehabilitation liability is reduced.

The department encourages progressive rehabilitation and title holders may request an assessment of the security deposit to reflect a decrease in rehabilitation liabilities. The relevant application form is to be submitted by the title holder to seek formal confirmation from the department that rehabilitation has been successful (for example, where rehabilitation has been partially or fully completed and a partial or full return of the security deposit is sought). The application form should be accompanied by other appropriate documentation to provide the required evidence that rehabilitation obligations have been met.

3. Rehabilitation cost estimate

3.1. Trigger for submitting a RCE

For any changes in rehabilitation liability, a RCE is to be calculated and submitted by the title holder. An assessment of the security deposit may be made at any time at the request of the Minister or on the Secretary's own initiative. In practice, the department reviews the security deposit at defined trigger points and for any major changes in rehabilitation liability, including in the following instances:

- as part of an approval granted by the department for activities and operations undertaken on title (for example, an exploration activity approval)
- as part of a plan prepared pursuant to legislative requirements, such as a petroleum operations plan or forward program
- at the request of the title holder following completion of rehabilitation
- at the request of the title holder in the event of an increase or decrease in rehabilitation liability
- at the request of the department, such as in response to a statutory notice, an audit, environmental incident or change in the final land use
- prior to the relinquishment, suspension or cancellation of a title.

The title holder may also seek a review of security deposit requirements by submitting a RCE to the department. The security deposit held for a title must cover the rehabilitation liability associated with the title and any approved or directed activities (including liabilities associated with previous or ongoing activities).

3.2. Timing of the RCE

The RCE must be based on a specified stage of disturbance as set out in Table 1 below:

Table 1. Timing of the RCE

Option	Description
Maximum disturbance within a term (including liabilities associated with previous and on-going activities)	The RCE is based on the maximum disturbance or greatest rehabilitation liability in a period covered by the estimation between 'insert start date' and 'insert end date'.
Snapshot of disturbance	<p>The department will accept a RCE calculated as a 'snapshot' of all current liabilities for the title at the date of application, or liabilities at 'insert date' (such as a snapshot at a time in the future).</p> <p>Title holders selecting this option must clearly identify proposed variations in rehabilitation liabilities between the time of the 'snapshot' and the next reporting period. As such, a new RCE must be submitted as part of each forward program.</p>

The applicability of these options to particular operations should be discussed with the department.

3.3. Scope of the RCE

All RCE's must include a detailed costing of all outstanding rehabilitation liabilities relating to activities undertaken within a title, including those on previously relinquished areas, and including liabilities which may arise in the future.

Where the activities carried out on the title have caused disturbance to an adjoining area, the costs of rehabilitating the adjoining area, or any other impacted areas, must also be included in the RCE.

Where a mining lease excludes the surface area above underground mining operations, the RCE must include any exploration or mining-related rehabilitation liabilities on the surface which are likely to result from activities under that lease (including any subsidence damage not covered by the *Mine Subsidence Compensation Act 1961*).

If there are any additional rehabilitation obligations outlined in the conditions of the title, or obligations to protect the environment under Part 11 of the *Mining Act 1992* or Part 6 of the *Petroleum (Onshore) Act 1991*, these liabilities must also be accounted for within the RCE.

The RCE must relate to a single title unless arrangements have been made with the department for a group of titles to be covered by a group security deposit. A RCE submitted for a title within a group security deposit must include the following information:

- the title number and the registered name(s) of the title holders for all titles within the group
- the title number of the head title

- an estimate of proportion of the rehabilitation liability across each title. This may be relevant where operations exist across multiple leases, yet are managed under a consolidated petroleum operations plan / rehabilitation management plan / forward program, and
- the total sum of the rehabilitation liability of all titles in the group.

Where a title overlaps with another title (such as for petroleum, different minerals or for the same mineral at different depths), each rehabilitation liability must be allocated to a specific title (unless arrangements have been made with the department for a joint security deposit) to avoid either omission or duplication of rehabilitation costs.

3.4. Basis for the calculation of the RCE

3.4.1. Rehabilitation planning

A key underlying principle in achieving best practice rehabilitation is the need to effectively integrate rehabilitation planning and processes throughout the entire life cycle of a mining or petroleum production operation, commencing at the exploration phase.

The RCE must be based on, and refer to, the relevant rehabilitation documents such as:

- an exploration activity approval
- rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan
- a forward program
- a petroleum operations plan / rehabilitation management plan.

The above rehabilitation documents must be prepared in accordance with relevant departmental requirements. In preparing such rehabilitation documents title holders should conduct a risk assessment to evaluate the range of potential threats and opportunities associated with rehabilitating disturbed areas to a condition that can support the intended final land use(s). The RCE must take into account the key threats which may affect rehabilitation success or lead to rehabilitation failure. Importantly, for any risks identified as having a high probability of occurrence, the costs for mitigating the environmental impacts of these risks should be considered and included in the RCE as contingency items. The department's *Rehabilitation Cost Estimation Tool Handbook* provides information on contingencies and how they can be calculated.

The RCE must be based on the rehabilitation objectives, rehabilitation completion criteria and approved final land use. The rehabilitation objectives and rehabilitation completion criteria define the outcomes that will be used to measure and determine whether rehabilitation is successful and capable of supporting the intended final land use on a sustainable basis.

3.4.2. Final land use

All rehabilitation relating to a title must meet an agreed final land use(s). Where a final land use has not been defined, the title holder must consult with the NSW Government to establish or modify an agreed final land use as soon as reasonably practical.

Where a final land use has been defined by a development consent under the *Environmental Planning and Assessment Act 1979*, the final land use can only be changed through a modification to that consent (or a new consent).

3.5. Method of calculation

3.5.1. Overview

The RCE must cover the government's full costs in undertaking rehabilitation in the event of default by the title holder. In the event of default, the department would need to engage a contractor to rehabilitate the title. For this reason, all accounted costs must be for a third party contractor(s) to undertake the activities. The RCE must therefore include the following costs:

- machinery/plant/equipment to be used for rehabilitation activities (the title holder must consider what machinery is appropriate for the site and the machinery suitable for accessing disturbance areas etc.)
- mobilisation of machinery/plant/equipment to the site
- contractors/personnel to undertake activities
- monitoring of completed rehabilitation
- project management, and
- contingencies.

3.5.2. Rehabilitation cost estimation tool

The department has prepared a Rehabilitation Cost Estimation Tool (RCE tool) for exploration, mining and petroleum production operations to assist title holders in the calculation of a RCE. The RCE tool can be downloaded from the website resourcesregulator.nsw.gov.au

The RCE tool does not apply to the sealing of petroleum wells associated with exploration and production activities under the *Petroleum (Onshore) Act 1991*. Petroleum title holders can use the RCE tool for guidance on calculating an appropriate RCE for disturbance associated with their activities. However, it is the expectation that a separate estimate is submitted for the sealing of petroleum wells, with the RCE prepared by a suitably qualified expert in consideration of the scale, nature, risks and age associated with petroleum wells specific to the petroleum title.

The costs for the majority of rehabilitation activities are included in the RCE tool. Title holders are required to add the unit costs for other site specific items to ensure that all operations required to satisfactorily meet rehabilitation obligations are accounted for within the RCE.

The RCE tool has also been divided into a series of operations and domains in order to best address the complexity of:

- different land uses across a site
- the difference between an underground and an open-cut mining operation
- operations specific to exploration.

The framework of the RCE tool has also been developed in accordance with a tiered risk-based approach to calculating rehabilitation costs whereby the outcome of the estimation will be based on the nature, size, scale and complexity of the operation.

Title holders may also choose to use another methodology for calculating a RCE, subject to review and acceptance by the department. At a minimum, acceptable methodologies must include a

detailed, quantified, schedule of rehabilitation activities (similar to that which would be provided to an external contractor for quotation), including:

- detailed line items which breakdown the activities to be undertaken for rehabilitation in each area
- costs against each line item and how these costs have been derived
- any other site specific unit rates and how these have been derived
- justification of any regional variances
- subtotals and total costs, and
- a separate schedule of unit costs.

Refer to the department's *Rehabilitation Cost Estimation Tool Handbook* for further guidance on using alternative rates.

All RCEs must refer to the relevant schedule of rehabilitation costs which is contained within the RCE tool. Any variation from these costs must be justified in the RCE documentation, and where requested by the department, endorsed by a suitably qualified person such as a mining engineer or quantity surveyor.

A RCE may be rejected if the department is not satisfied that the methodology of calculating rehabilitation costs is adequate and accurate.

3.5.3. Factors to be considered

It is recognised that exploration, mining and petroleum production activities are carried out in numerous locations on a title and at varying times throughout the term of the title. There may also be different rehabilitation outcomes and final land use requirements for each different location where activities have occurred.

The RCE should identify all of the disturbance areas resulting from the operations occurring on the title. The RCE must detail the costs to rehabilitate all disturbance areas to the agreed rehabilitation objectives, rehabilitation completion criteria, and ultimately, the final land use.

As a minimum, details of costs for the following items should be considered and, where relevant, included in the RCE for the title:

- remediation of contaminated areas
- management of wastes
- management of acid sulphate soils
- removal of machinery, plant and equipment
- borehole or petroleum well suspension and decommissioning
- installation of erosion and sediment control measures
- management of any stockpiles on site and appropriate use of stockpiled soil in rehabilitation activities
- appropriate substrate preparation in each disturbed area
- re-establishment of final landform which is stable and does not present a risk of environmental harm

- native revegetation and use of salvaged vegetative materials for habitat
- agricultural revegetation
- surface and groundwater management
- relevant monitoring programs to monitor the progress and performance against the rehabilitation objectives and rehabilitation completion criteria
- relevant care and maintenance activities (including details of how long care and maintenance is likely to be required)
- any other activities involved to meet the rehabilitation objectives, rehabilitation completion criteria, and ultimately the final land use
- contingency for managing risks that have a high probability of occurring (as indicated by the risk assessment), and
- costs for implementing any other mandatory rehabilitation requirements indicated in the title conditions or relevant legislation.

3.6. Goods and services tax

Goods and Services Tax (GST) should not be included in the RCE.

3.7. Submission of the RCE

All RCEs must be submitted online via the Resources Regulator portal which can be accessed via the department's website (refer to Section 3.1 for the relevant triggers for submission of a RCE).

Appendix 1: Definitions

Documents referenced in this guideline are amended or replaced at times.

Table 2. Definitions

Term	Definition
Activity	Any activity carried out in connection with exploration including: <ul style="list-style-type: none"> • the use of land • means of accessing land • the carrying out of a work.
Activity approval	An approval to carry out assessable prospecting operations granted under the <i>Mining Act 1992</i> or the <i>Petroleum (Onshore) Act 1991</i> .
Assessable prospecting operation	Any prospecting operation that is not exempt development within the meaning of State Environmental Planning Policy (Resources and Energy) 2021.
Assessed deposit	Has the same meaning as it has in the <i>Mining Act 1992</i> or the <i>Petroleum (Onshore) Act 1991</i> .
Department	Department of Primary Industries and Regional Development.
Drilling	The perforation of the earth's surface crust by mechanical means, whether the hole caused by the perforation is vertical, inclined or horizontal, and includes all operations for preventing collapse of the sides or any such hole or for preventing it from being filled with extraneous materials including water.
Environment	Has the same meaning as it has in the <i>Mining Act 1992</i> .
Exploration	Has the same meaning as it has in the State Environmental Planning Policy (Resources and Energy) 2021.
Final landform and rehabilitation plan	Has the same definition as in the Mining Regulation 2016.
Final land use	The intended final landform and land use following completion of exploration activities/mining/petroleum production, as defined in an approval under the <i>Environmental Planning and Assessment Act 1979</i> (or as formally agreed with the department where the final land use is not defined in such an approval).
Forward program	Has the same definition as in the Mining Regulation 2016.
Group security deposit	A single security deposit that, under a security deposit condition or conditions, is required to be provided and maintained in respect of more than one title.
Land	Has the same meaning as it has in the <i>Mining Act 1992</i> or <i>Petroleum (Onshore) Act 1991</i> , as relevant.
Minimum deposit	Has the same meaning as it has in the <i>Mining Act 1992</i> or <i>Petroleum (Onshore) Act 1991</i> , as relevant.
Mining	Has the same meaning as it has in the <i>Mining Act 1992</i> .

Term	Definition
Minister	Means the Minister administering the <i>Mining Act 1992</i> or <i>Petroleum (Onshore) Act 1991</i> , as relevant.
Petroleum operations plan (POP)	A POP may be required as a condition of a title under the <i>Petroleum (Onshore) Act 1991</i> . The POP details the manner in which the title holder proposes to conduct operations (including rehabilitation) consistent with the planning approvals and conditions imposed by the department and other agencies. The POP includes a closure plan.
Petroleum production	Has the same meaning as it has in the State Environmental Planning Policy (Resources and Energy) 2021.
Prospect	Has the same meaning as it has in the <i>Mining Act 1992</i> and the <i>Petroleum (Onshore) Act 1991</i> , as relevant.
Regulations	Means the Mining Regulation 2016 and the Petroleum (Onshore) Regulation 2016, as relevant.
Rehabilitation	Has the same meaning as it has in the <i>Mining Act 1992</i> .
Rehabilitation completion	The final phase of rehabilitation when a rehabilitation area has achieved the final land use for the exploration/mining area: <ul style="list-style-type: none"> as stated in the approved rehabilitation objectives and the approved rehabilitation completion criteria as spatially depicted in the approved final landform and rehabilitation plan. Rehabilitation areas may be classified as complete when the department has determined in writing that rehabilitation has achieved the final land use following submission of the relevant application by the title holder.
Rehabilitation completion criteria	Rehabilitation completion criteria set out the criteria the achievement of which will demonstrate the achievement of the rehabilitation objectives.
Rehabilitation cost estimate (RCE)	Has the same definition as in the Mining Regulation 2016. The title holder's cost estimate to rehabilitate all liabilities and obligations associated with the title (including in relation to any land or water), and other relevant legislative requirements, at a nominated point in time.
Rehabilitation Cost Estimation Tool	The department's calculation tool with unit rates for rehabilitation, used in the preparation of a RCE.
Rehabilitation management plan	As defined in the Mining Regulation 2016.
Rehabilitation objectives	Means the rehabilitation objectives required to achieve the final land use for the mining area.
Secretary	The Secretary of Department of Primary Industries and Regional Development.
Security deposit	Financial assurance provided to the NSW Government to secure funding for the fulfilment of obligations under the title, including obligations under the title that may arise in the future.
Site	The land on which exploration, mining or petroleum production is located.

Term	Definition
Title	An authority issued under the <i>Mining Act 1992</i> or a title issued under the <i>Petroleum (Onshore) Act 1991</i> , as relevant.
Title holder	The holder of a title.