

25 September 2024

Mining Act Cancellation

Reasons for decision

| | |
|----------------|--|
| Authorisation | Mining Lease No. 1446 (Act 1992) |
| Lease Holder | Macquarie Marble and Lime Pty Ltd ACN: 128 300 658 |
| Legislation | Section 125 of the <i>Mining Act 1992</i> |
| Decision-maker | Peter Day Executive Director, Resources Regulator NSW Resources Department of Primary Industries and Regional Development |

SECTION 125 – CANCELLATION OF AUTHORITY

As authorised by section 125 of the *Mining Act 1992 (Act)*, I Peter Day, having delegated authority from the Minister, have decided to cancel Mining Lease No. 1446 (Act 1992) (**ML 1446**).

This decision takes effect on 25 September 2024

REASONS FOR DECISION

Legislation

1. Section 125 of the Act provides that the decision-maker may cancel an authority as to the whole or any part of the land to which it relates if satisfied that one or more specified grounds have been met.
2. Section 125(1) of the Act sets out the grounds of cancellation of an authority, which includes, amongst others, if the decision-maker is satisfied that:
 - section 125(1)(b) of the Act provides that a decision-maker may cancel an authority if the decision-maker is satisfied that the holder of the authority has contravened a provision of this Act or the Mining Regulation 2016 (**Regulation**) (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
 - section 125(1)(c) of the Act provides that a decision-maker may cancel an authority if the decision-maker is satisfied that a person has contravened a condition of authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
 - section 125(1)(f) of the Act provides that a decision maker may cancel an authority if the holder of the authority is convicted of any offence relating to mining or minerals.
 - section 125(1)(h) of the Act provides that a decision-maker may cancel an authority if the decision-maker is satisfied that there has been a contravention of a direction under section 240 or 240AA of the Act.
3. Section 126 of the Act also provides that the decision-maker must not cancel an authority unless the holder of the authority has been given at least 28 days in which to make representations with respect to a notice of proposed cancellation that contains details of the grounds for the proposed cancellation, and any such representations have been taken into consideration.
4. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person; and the Minister has delegated the functions to cancel an authority under section 125 of the Mining Act to the Executive Director of the NSW Resources Regulator (**Regulator**).
5. The dictionary contained within the Act includes the following definitions:
 - “**authority** means an exploration licence, an assessment lease or a mining lease.”
 - “**mine** means-
 - (a) When used as a noun-any place, pit shaft, drive, level or other excavation, drift gutter, lead, vein, lode, reef or salt pan (whether occurring naturally or artificially created) in, on or by means of which, any mining operation is carried on, and
 - (b) When used as a verb-to extract material from land for the purpose or recovering minerals from the material so extracted or to rehabilitate land (other than a derelict mine site) from which material has been extracted, but does not include any activity declared not to be mining by a regulation under section 11A or by an order made under such a regulation.”

- “*mineral* means any substance prescribed by the regulations as a mineral for the purposes of this definition, and includes coal and oil shale, but does not include petroleum.”

Background

- On 19 March 1999, ML 1446 was granted to prospect and mine for dolomite, limestone and phosphates, which are Schedule 1 minerals under the Mining Regulation 2016 (**Regulation**).
- ML 1446 is situated about 3.62km west-south-west of Wauchope in the Broken Bargo State Forest, located in the Port Macquarie-Hastings LGA.
- On 5 August 2008, ML 1446 was transferred to Macquarie Marble and Lime Pty Ltd (ACN 128 300 658) (**MML**).
- The current officeholders for MML are:
 - Christopher Wayne Stokes (Director – appointment date 9 May 2014 & Secretary – appointment date 25 February 2019).
 - Joachim Holger Kretzschemar (Director – appointment date 25 February 2019).
- ML 1446 was last renewed on 13 August 2018, with the expiry date being 19 March 2029.

Proposed Grounds for Cancellation

- On 19 August 2024, I issued the lease holder a notice proposing cancellation of the Authority. This notice outlined the grounds for cancellation relied upon in proposing cancellation (Table 1).

Table 1: Grounds for cancellation

| # | Grounds for cancellation | Particulars |
|---|---|---|
| 1 | Lease holder has contravened a provision of the Act or Regulation (section 125(1)(b) of the Act). | Failure to nominate a contact person in accordance with clause 19 of Schedule 8A of the Regulation (Schedule 8A). |
| 2 | | Failure to submit a rehabilitation objectives statement (ROBJ) in accordance with clauses 9, 12(1)(a) and 15 of Schedule 8A. |
| 3 | | Failure to submit a forward program (FWP) in accordance with clause 9, 13(1) and 15 of Schedule 8A. |
| 4 | | Failure to submit Annual Environmental Management Reports |
| 5 | | Failure to comply with Notice NTCE0003173 issued under section 240 of the Act. |
| 6 | | Failure to comply with Notice NTCE0008309 issued under section 240 of the Act |
| 7 | | Failure to comply with Notice NTCE0007407 to provide information and records, issued under section 248B(1) of the Act. |
| 8 | | Failure to submit Annual Reports in accordance with section 163C of the Act and clause 59 of the Regulation since 2018. |

| # | Grounds for cancellation | Particulars |
|---------|---|--------------------------|
| 9 - 12 | Lease holder has contravened a condition of the authority (section 125(1)(c) of the Act). | Refer to Grounds 1 – 4. |
| 13 | Lease holder has been convicted of any offence relating to mining or minerals (section 125(1)(f) of the Act). | Refer to Ground 6. |
| 14 - 15 | Lease holder has contravened a direction under section 240 of the Act (section 125(1)(h) of the Act). | Refer to Ground 5 and 6. |

Schedule 8A standard conditions of mining leases [Grounds 1 – 3 & 9 - 11]

12. ML 1446 is a ‘small mine’ under Schedule 8A.
13. Part 2 of Schedule 8A imposed several standard conditions of mining leases, with these conditions taking effect from 2 July 2023 for small mines [Clause 31A of the Regulations].
14. Pursuant to clause 31A of the Regulation, all standard conditions under Part 2 of Schedule 8A are to take effect from 2 July 2023, 24 months after the commencement day, being 2 July 2021.
15. In addition, as the security deposit required under ML 1446 is \$85,000, which is greater than the minimum deposit prescribed under the Act, the conditions contained within Division 3 of Part 2 of Schedule 8A also apply.

Nominated Contact Person [Ground 1 & 9]

16. Pursuant to clause 19 of Schedule 8A the holder of a mining lease must nominate a natural person to be the contact person with whom the Secretary of the Department (Secretary) can communicate in relation to the mining lease for the purposes of the Act.
17. Written notice of the full name and contact details of the nominated person must be given to the Secretary within 28 days after the date on which the condition applied, being 30 July 2023. The notification must be lodged online via the Resources Regulator Portal.
18. A contact person has not been nominated by MML for ML 1446.

Rehabilitation Objective Statement (ROBJ) [Ground 2 & 10]

19. Pursuant to clauses 9, 12(1)(a) and 15 of Schedule 8A, the holder of a mining lease must, before the end of the ‘initial period’, prepare the ROBJ and give it to the Secretary for approval, in the form and way approved by the Secretary.
20. On 21 June 2023, the Regulator wrote to MML, to advise that the initial period was extended and will end on 1 March 2024. MML was also reminded that “*the required rehabilitation documents will now only be required to be prepared and submitted prior to 1 March 2024*”. This letter was sent by post on 22 June 2023 and by email on 28 June 2023.
21. A ROBJ has not been received for ML 1446.

Forward Program (FWP) [Ground 3 & 11]

22. Pursuant to clause 9, 13(1) and 15 of Schedule 8A, the holder of a mining lease must prepare an FWP and give it to the Secretary in the form and way approved by the Secretary, before the end of the initial period, being 1 March 2024. Of note, a rehabilitation cost estimate (RCE) is required to be submitted as part of the FWP.

23. An FWP, including the RCE, has not been received for ML 1446

Implementation of the Rehabilitation Reforms (Schedule 8A)

24. Both prior to and since the implementation of these conditions, the Regulator has consulted with leaseholders, peak bodies and the mining sector generally advising of these changes. In addition, the Regulator has published guidance material on its website, including guidelines and fact sheets; conducted a webinar for small mines in July 2023 which is still available to view via the Regulator's website; and published mine rehabilitation news providing updates on the requirements.

25. On 14 February 2023, the Department wrote to MML, providing notice of the proposed changes in the conditions of authorisation in response to the commencement of the new standard conditions under Schedule 8A, with the removal of duplicate or inconsistent rehabilitation conditions and the removal of other redundant conditions. Included was reference to 'Frequently Asked Questions' document on the new standard rehabilitation conditions on mining leases, with a copy being provided in the email containing the correspondence.

26. On 28 May 2024, the Regulator telephoned Mr Stokes to discuss the above requirements under Schedule 8A, with a follow-up email being sent on this day providing information and instructions.

27. A response was received by email the same day stating, *"This is to advise the company is insolvent and has not operated on the site since 2018-2019 the company is awaiting completion of wind-up procedures"*.

Annual Environmental Management Reports (Ground 4 & 12)

28. On 21 May 2010, ML 1446 was renewed until 19 March 2019. At the time of renewal, condition 4 'Environment Management Report' was imposed on the authorisation, requiring MML to lodge an Environmental Management Report annually or at dates otherwise directed by the then Director-General.

29. On 13 August 2018, ML 1446 was renewed until 19 March 2029. At the time of renewal, the before mentioned 'Environment Management Report' condition was replaced with condition 3 'Mining Operations Plan and Annual Rehabilitation Report' which was imposed on the authorisation.

30. Condition 3(f) required MML to prepare a Rehabilitation Report (formerly an AEMR) to the satisfaction of the Minister that provided a detailed review of the progress of rehabilitation against the performance measures and criteria established in the approved Mining Operations Plan (MOP) and submit the rehabilitation report annually on the grant anniversary date, or at such other times as agreed by the Minister. The report was to be prepared in accordance with the relevant annual reporting guidelines published on the Department's website.

31. Condition 3 continued to be in force until 2 July 2023, when the condition was removed as part of the Instrument of Variation, dated 4 April 2023, in response to the implementation of Schedule 8A.

32. A review of departmental records has confirmed the following:

- The last approved MOP was received by the Regulator on 2 February 2018; and was approved on 9 March 2018 until 31 January 2021.
- The last Annual Environment Management Report (**AEMR**) dated 14 August 2018 was received on 12 December 2018 for the period 19 March 2017 to 19 March 2018.
- On 8 February 2019, an Official Caution was issued by the Regulator for failing to lodge the before mentioned AEMR by the due date, being 30 September 2018.
- MML have not provided any further Annual Rehabilitation Reports under condition 3(f).
- On 7 May 2021, Mr Stokes participated in a voluntary record of interview in relation to this and other matters, at which time certain admissions were made by Mr Stokes that he was not familiar with the AEMR requirement.

Breach of direction or notice issued under section 240 of the Act [Ground 5 – 6 & 13 – 15]]

33. Pursuant to section 240 of the Act, the Secretary or an inspector appointed under section 361 of the Act may, by written notice, direct a responsible person in relation to an authorisation to do any one or more of the following:

- Give effect to a condition of an authorisation (except a condition requiring payment of royalty or provision or maintenance of a security deposit) – subsection 240(1)(a).
- Address any adverse impact that activities carried out under, or purportedly carried out under, an authorisation have had on any aspect of the environment – subsection 240(1)(b).
- Address a risk of there being such an impact – subsection 240(1)(c).
- Conserve the environment, protect it from harm as a result of activities under the authorisation or to prevent, control or mitigate any such harm – subsection 240(1)(d).
- Rehabilitate land or water that is or may be affected by activities under the authorisation – subsection 240(1)(e).

34. A direction may require a person to carry out or stop carrying out particular activities, carry out activities in a particular manner or achieve specified outcomes within a specified period; and may require the person to prepare and submit reports as to the measures the person proposes to take for the purpose of complying with the direction or the progress made by the person in implementing any such measures.

35. It is an offence under section 240C(1) of the Act where a person fails to comply with a direction or notice, unless the person has a reasonable excuse for not doing so.

36. Based on the material currently before me, I am satisfied that MML has failed to comply, without reasonable excuse, with the following directions issued under section 240 of the Act, and in doing so has contravened section 240C of the Act on each occasion.

Notice NTCE0003173 (Grounds 5 & 13)

37. On 8 July 2019, following a site inspection conducted on 21 June 2019, an inspector appointed under section 361 of the Act, issued a notice under section 240 of the Act on MML [Our Reference: NTCE0003173] (Notice NTCE0003173), which contained three directions.
38. Direction 1(1) of Notice NTCE0003173 required MML to stabilise disturbed areas to minimise erosion and dust by 5.00pm 30 August 2019.
39. Direction 1(2) of Notice NTCE0003173 required MML to remove all rubbish and unserviceable equipment by 5.00pm 30 August 2019.
40. Direction 2 of Notice NTCE0003173 required MML to engage a suitably qualified independent person to undertake a Rehabilitation Cost Estimate (**RCE**) by 5.00pm 27 September 2019.
41. Direction 3(1) of Notice NTCE0003173 required MML to provide a report to the Regulator detailing the actions undertaken to comply with the directions, including photographs taken before and after the actions were undertaken by 5.00pm 27 September 2019.
42. Direction 3(2) of Notice NTCE0003173 required MML to submit the RCE by 5.00pm 27 September 2019.
43. On 13 August 2020, a further site inspection was conducted by the Regulator to assess compliance with Direction 1 of notice NTCE0003173.
44. MML did not submit the RCE required under Direction 3(2) nor provide the required report under Direction 3(1) by the due date. No extension was sought by MML in relation to Notice NCTE0003173.
45. An investigation was initiated by the Regulator with a 'Commencement of Investigation' letter being sent on 14 April 2021 by email correspondence [Our Reference: LETT0005927].
46. The investigation included the issuance of a Notice under s248B of the Act requiring the production of information and records [Our Reference: NTCE0007407]; and an electronically recorded record of interview with Mr Stokes on 7 May 2021. Certain admissions were made by Mr Stokes in the record of interview with respect to the non-compliance with Direction 3(1) and Direction 3(2); however, Mr Stokes did not agree that he had failed to comply with Direction 1(1).
47. Amongst other things, the investigation sustained the allegations that MML had failed to comply with Direction 1(1), Direction 3(1) and Direction 3(2) without reasonable excuse, each being a separate offence under section 240C of the Act.
48. On 17 May 2021, the Regulator wrote to MML advising of the outcome of the investigation, which resulted in MML being issued the following:
 - Penalty Notice No. 3149902297 for failing to comply with Direction 1(1), an offence under section 240C of the Act.
 - Official Caution for failing to comply with Direction 3(1), an offence under section 240C of the Act.
 - Penalty Notice No. 3149902306 for failing to comply with Direction 3(2), an offence under section 240C of the Act.

Notice NTCE0009809 [Grounds 6, 14 & 15]

49. On 20 May 2021, an inspector appointed under section 361 of the Act, issued a notice under section 240 of the Act on MML [Our Reference NTCE0008309] (Notice NTCE0008309) which contained two directions.
50. Direction 1 of Notice NTCE0008309 required MML to engage a suitably qualified independent person to undertake a RCE and submit it by 5.00pm 1 November 2021.
51. Direction 2 of Notice NTCE0008309 required MML to appoint a suitably qualified, experienced and independent person to develop a rehabilitation plan and compile a written report of this plan for assessment by the Regulator by 5.00pm 1 November 2021.
52. No response was received from MML in response to either Direction 1 or 2, with neither the RCE or rehabilitation plan and related report being submitted to the Regulator by the due date.
53. An investigation was initiated by the Regulator with a 'Commencement of Investigation' letter being sent on 16 November 2021 by email correspondence [Our Reference: LETT0006785].
54. The investigation included an electronically recorded record of interview with Mr Stokes on 1 February 2022, in which certain admissions were made that he had received Notice NTCE0008309 but had not complied with Direction 1 or Direction 2 and had not made any attempts to contact the inspector in relation to the notice.
55. Amongst other things, the investigation sustained the allegations that MML had failed to comply with Direction 1 and Direction 2 without reasonable excuse, each being a separate offence under section 240C of the Act. The Regulator notified MML of this decision in writing on 25 March 2022 and that the Regulator was considering its regulatory response to these sustained offences [Our Reference: LETT0007125].
56. The Regulator commenced prosecution action against MML for failing to comply with Direction 1 and Direction 2 of Notice NTCE0008309 (two offences), with the matter being first listed at the Port Macquarie Local Court on 3 August 2022.
57. On 9 November 2022, MML was convicted and sentenced for contravening section 240C of the Act in relation to both Direction 1 and Direction 2. MML was convicted and fined \$27,000 for each offence.
58. Of note, an RCE has never been lodged by MML in relation to Notices NTCE0003173, NTCE0008309 or the requirements under schedule 8A of the Act.

Breach of notice issued under section 248B of the Act [Ground 7]

59. Pursuant to section 248B of the Act, an inspector may, by written notice given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice in connection with any matter relating to the administration of this Act.
60. It is an offence under section 248S(1) of the Act where a person, without lawful excuse, neglects or fails to comply with the requirement made of the person under section 248B of the Act.

61. On 22 February 2021, an inspector appointed under section 361 of the Act, issued a notice under section 248B(1) of the Act on MML to provide information and records by 19 March 2021. [Our Reference; NCTE0007407].
62. The information and records sought were in connection to the investigation into MML's compliance with Notice NTCE0003173 and included information in relation to the issuance and receipt of the notice and what action was taken by MML in response to the directions; and any records as directed in Notice NTCE0003173 and in support of the responses to the information sought.
63. On 19 March 2021, Mr Stokes responded with three emails to the Regulator which contained a letter response to the Issuing Inspector for NTCE0007407 and photographs of the mine. There was no direct response included which addressed the requirements of NTCE0007407.
64. No further response was received.
65. The responses were assessed as being not adequate, with a further allegation being included in the investigation that MML had contravened section 248S(1) of the Act in failing to comply with the requirements of Notice NCTE0007407.
66. The investigation included an electronically recorded record of interview with Mr Stokes on 7 May 2021. During that interview, Mr Stokes made certain admissions in relation to not complying with the requirements of Notice NTCE0007407.
67. Amongst other things, the investigation sustained the allegation that MML had failed to comply with Notice NTCE0007407 without reasonable excuse, an offence under section 248S(1) of the Act.
68. On 17 May 2021, the Regulator wrote to MML advising of the outcome of the investigation, which resulted in MML being issued an Official Caution.

Annual Reports (Exploration Reports) [Ground 8]

69. Pursuant to section 163C of the Act and clause 59 of the Regulation, the holder of an authorisation must prepare and lodge an annual report within 1 calendar month of the grant anniversary date or such other date notified by the Secretary in writing.
70. On 23 March 2018, the Regulator issued MML a warning letter for failing to lodge its annual report by the due date of 19 April 2009. MML was advised that consideration would be given to escalated enforcement action should the report not be received by 20 April 2018.
71. The annual report was subsequently provided by MML on 27 June 2018 for the period 19 March 2009 to 19 March 2018.
72. On 16 July 2018, the Regulator issued an Official Caution for a breach of section 163C of the Act [Our Reference: 0125 - 2018]
73. On 18 February 2019, a reminder letter was sent by the Department to MML, reminding it to submit the annual report by the due date of 18 April 2019.
74. No report was received, and an investigation was commenced by the Regulator. This investigation resulted in a breach of section 163C being sustained by the Regulator and a penalty notice, reference number 3149902140, being issued on the 10 December 2019.

75. MML has not provided the report due on 18 April 2019 or any subsequent annual reports.

76. No exemption to this requirement has been provided, nor has an amendment to the due date been given.

Representations

77. On 19 August 2024, the Regulator telephoned Mr Stokes and advised him of the proposed cancellation notice. Mr Stokes did not object to the proposed cancellation of ML 1446 and agreed to respond.

78. On 2 September 2024, the Regulator contacted Mr Stokes to confirm receipt of the proposed cancellation notice and to follow up on the proposed response.

79. Later this day, Mr Stokes emailed the Regulator in response to the proposed cancellation notice. Mr Stokes stated:

“As mentioned with your phone call I have never operated the mine and have been thrown into the role as a director due to the illegal actions of the previous manager in 2014, since that time that mine has never been in operation I am more than happy to have the licence cancelled as I have some serious health problems and this is just another issue to add to that list, as mentioned in your phone call the company is bankrupt and has no means to run any business.

Please except my apology for any inconvenience and in appreciation of your anticipated co-operation Wayne Stokes.”

80. No further representations were received.

Considerations and findings

81. I am satisfied that the requirements of section 126(1) and (2) of the Act have been met. The lease holder was notified of my proposed decision to cancel ML 1446 on 19 August 2024 and was afforded a period of greater than 28 days, being until 5pm on 20 September 2024 to respond and make representations with respect to the proposed cancellation.

82. I note that on 2 September 2024, Mr Stokes responded to the proposed cancellation notice stating that he was *“more than happy to have the licence cancelled”* and that *“the company is bankrupt and has no means to run any business”* and that no further representations were made.

83. On this basis, I believe that the MML has been afforded procedural fairness in respect of my decision to cancel ML 1446.

84. After having carefully considered the information before me, I am satisfied that MML, being the lease holder of ML 1446 at the time of the offending, has contravened the following conditions of an authorisation which constitute grounds for cancellation:

- a. MML, being the lease holder of ML 1446 at the time of the offending has contravened the following provisions of the Act:
 - i. Section 378D(1) of the Act – contravene a condition of authorisation. MML failed to nominate a contact person [Ground 1], submit a ROBJ as required [Ground 2] and submit a

FWP as required [Ground 3]; all standard conditions of mining leases, as detailed in Part 2 of Schedule 8A.

- ii. Section 378D(1) of the Act – contravene a condition of authorisation. MML failed to lodge annual Environmental Management Reports/Annual Rehabilitation Reports in accordance with the respective conditions of authorisation, being condition 4 up until 13 August 2018, replaced by Condition 3 until 2 July 2023 when the conditions under Part 2 of Schedule 8A took effect [Ground 4].
 - iii. Section 240C of the Act – breach of direction or notice issued under Part 10 Division 3 of the Act. MML failed to comply, without reasonable excuse, with Direction 1(1), Direction 3(1) and Direction 3(2) contained within Notice NTCE0003173 [Ground 5].
 - iv. Section 240C of the Act – breach of direction or notice issued under Part 10 Division 3 of the Act. MML failed to comply, without reasonable excuse, with Direction 1 and Direction 2 contained within Notice NTCE0009809 [Ground 6].
 - v. Section 248S(1) of the Act – neglects or fails, without lawful excuse, with a requirements made of a person under Part 12 of the Act. MML failed to comply with a notice issued under section 248B of the Act to furnish information and records in connection to an investigation into it’s compliance with Notice NTCE0003173 [Ground 7].
 - vi. Section 163C of the Act- failure to prepare and lodge annual reports required under clause 59 of the Regulation. Since 2018, MML has failed to prepare and lodge the required annual report [Ground 8].
- b. As detailed in Grounds 1 to 4 inclusive, MML, being the lease holder of ML 1446 at the time of the offending has contravened conditions of the authority.
 - c. MML, being the lease holder of ML 1446 was convicted of an offence relating to mining or minerals. On 9 November 2022, MML was convicted and sentenced for contravening section 240C of the Mining Act in failing to comply with Direction 1 and Direction 2 of Notice NTCE0008309 and fined \$27,000 for each offence. [Ground 6]. The Directions contained within Notice NTCE0008309 was issued under section 240(1)(c) of the Act to address a risk of an adverse impact on any aspect of the environment from activates carried out under, or purportedly carried out under the authorisation through the development of a rehabilitation plan and submission of an RCE. The contraventions relating to these offences relates to mining.
 - d. MML has contravened a direction under section 240 of the Act.

85. I have given due regard to the objects of the Act set out in section 3A in considering an appropriate regulatory response, in particular:

- a. subclause (e) – the requirement to pay security to provide for the rehabilitation of mine sites, and
- b. subclause (f) – ensuring the effective rehabilitation of disturbed land and water


86. In determining this matter, I have also given due regard to the new standard rehabilitation and reporting conditions on mining leases introduced by the NSW Government in July 2021 (Schedule 8A).
87. These amendments were made to modernise the rehabilitation framework and set clear, achievable and enforceable requirements for rehabilitation across mine sites in NSW to replace existing rehabilitation conditions on mining leases, with these conditions taking effect from 2 July 2023 for small mines. These reforms have been implemented to strengthen the rehabilitation framework and encourage best practice rehabilitation and ultimately ensure that mining lease holders progressively rehabilitate mine sites over the course of their project, and not just at closure.
88. These reforms include, amongst other things, an obligation to prepare and report annually on rehabilitation performance by way of a FWP (which includes the preparation of an annual RCE) and annual rehabilitation report. This enables the Regulator to determine whether a lease holder is rehabilitating 'as soon as reasonably practicable' after disturbance occurs. Further, the submission of the RCE helps the Regulator determine the amount of security deposit required to be held for the mine.
89. I specifically note that MML has failed to comply with several directions issued under section 240 of the Act, including attempts to obtain an RCE and rehabilitation management plan, even after suspending ML 1446 in 2022.
90. In addition to failing to comply with these directions, MML has disregarded its similar obligations under rehabilitation reforms (Schedule 8A) with no attempt being made to comply with the requirements.
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Conclusion

91. I note that MML has a lengthy history of non-compliance and consider the offending to be of a serious nature, one that warrants both an escalated and proportionate regulatory response.
92. I also note that the Regulator has previously initiated enforcement action, which included a successful prosecution and conviction for failing to comply with a direction under section 240 of the Act and the suspension of ML 1446 under section 240AA of the Act; and that no attempt has been made by MML to address the offending behaviour.
93. I also note that Mr Stokes, in responding to the proposed cancellation notice, does not oppose the cancellation. No comment was made with respect to the individual grounds being relied upon.
94. Having regards to the above grounds and the Regulator's Compliance and Enforcement Approach, I am satisfied that there is sufficient evidence and justification to cancel ML 1446 and consider that these matters warrant immediate cancellation.
95. Accordingly, I have decided to cancel ML 1446 under section 125 of the Act on the grounds detailed above.
96. In accordance with section 126(4) of the Act, the cancellation takes effect from the date on which the notice of the cancellation is given to the holder of the authority
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97. The cancellation of the authority in no way precludes the Regulator from taking any other action against MML in respect of ML 1446, including the requirement to rehabilitate ML 1446 to achieve the final land use or as otherwise directed regardless of whether the authority is cancelled or not; or the commencement of legal proceedings in relation to any of the identified breaches that form the basis of the decision.

Date of decision: 25 September 2024



Peter Day

Executive Director

NSW Resources Regulator

RIGHT OF APPEAL

Should you be aggrieved by this decision, you may appeal to the Land and Environment Court against the decision. Such appeal must be made within 14 days of the date of the notification of this decision, or within such further period as the Land and Environment Court may allow (section 128 *Mining Act 1992*).

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