

**SCHEDULE 1.5: REHABILITATION MONITORING, COMPLIANCE, MANAGEMENT AND BOND RETURN**

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## PRELIMINARY

### SCOPE OF ARRANGEMENTS

This Schedule applies to processes linked to the rehabilitation of exploration, mining and extractive operations on Crown land. The Schedule outlines the processes that the Department of Jobs, Precincts and Regions (DJPR) and the Department of Environment, Land, Water and Planning (DELWP) will follow in rehabilitation monitoring and compliance, the management of rehabilitated sites, bond return, and the transfer of management responsibility for the Crown land back to DELWP in accordance with relevant sections of the *Mineral Resources (Sustainable Development) Act 1990* (MRSDA). The relevant sections of the MRSDA are outlined in Table 1.

**Note 1:** Matters relating to the assessment and approval of rehabilitation plans are considered under *Schedule 2.2 Rehabilitation Approvals and Bond Setting*.

**Note 2:** This Schedule does not apply to:

- abandoned mines and quarries. Such cases are considered under *Schedule 1.4 Abandoned Mines and Quarries* and references are included as required.
- mines or quarries that have been declared under Section 7C of the MRSDA but the principles outlined in this Schedule may be applied.
- operations in areas, including wilderness, national, state or other parks, managed under the *National Parks Act 1975*.

### HOW TO READ THIS SCHEDULE

The Schedule consists of two parts:

- **Preliminary.** This part outlines the scope of the Schedule, establishes definitions and sets out the relevant legislation and other references (Table 1)
- **Part A. General.** This part includes important information and procedures relevant to rehabilitation monitoring, procedures for bond return, post rehabilitation management and transfer of management responsibility for the land to the Crown land manager.

### DEFINITIONS

1. **‘Bond’** means a rehabilitation bond referred to in section 80 of the MRSDA.
2. **‘Code of practice’** means the applicable code of practice under the MRSDA.
3. **‘Crown land’** has the same meaning as defined in the MRSDA.
4. **‘Crown land manager’** means DELWP.
5. **‘Crown land Minister’** has the same meaning as defined in the MRSDA.
6. **‘DELWP Action Officer’** means a DELWP Officer engaged by the DELWP Case Manager to provide expert technical, policy, regulatory or operational inputs.
7. **‘DELWP Case Manager’** means the DELWP Officer responsible for coordinating DELWP’s input on processes for monitoring of rehabilitation, bond return, land transfer and ongoing land management.

8. **‘DJPR Compliance Officer’** means the DJPR Regional Manager or Inspector responsible for regulating rehabilitation of mines or quarries.
9. **‘DJPR RLAB Officer’** means the DJPR Officer responsible for rehabilitation liability assessments and bonds.
10. **‘Head document’** means the head or relationship document, a component of the *Memorandum of Understanding for Earth Resource Industries Approvals and other Obligations and Responsibilities*, to which this Schedule is appended.
11. **‘Rehabilitation plan’** has the same meaning as defined in the MRSDA (a rehabilitation plan is a required component of a work plan or work plan variation).
12. **‘Rehabilitated site’** means a site that has been rehabilitated in accordance with its rehabilitation plan.
13. **‘Work plan’** means a work plan lodged under section 40(1) and 77G of the MRSDA.
14. **‘Work plan variation’** means a work plan variation lodged under section 41(1) and 77H of the MRSDA.

**Table 1: Sections of MRSDA relevant to this schedule**

<b>MRSDA Section</b>	<b>Description</b>	<b>Role/Responsibility</b>
Section 41 AA  Section 77HA	<b><i>Direction to lodge application for variation to work plan</i></b> Department Head may direct licensee to lodge application for variation of work plan (mining)  Department Head may direct authority holder to lodge application for variation of work plan (extractive industry)	DJPR is responsible for determining whether a variation to a work plan, including a rehabilitation plan, is required.
Schedule 9 Part 3 and Part 3A	<b><i>Department Head may direct work plan variation.</i></b> Where an unacceptable risk is posed, the Head of DJPR may direct that a work plan be varied.	DJPR is responsible for determining whether a variation to a work plan, including a rehabilitation plan, is required.
Section 80(4)	<b><i>Rehabilitation bond</i></b> If the Minister is of the opinion that the bond is insufficient, the Minister may require that the authority holder enter into a further rehabilitation bond, after consultation by notice with the authority holder.	DJPR is responsible for determining whether a further bond is required, if the Minister is of the opinion that the bond already entered into is insufficient.
Section 82(1)	<b><i>Return of bond if rehabilitation satisfactory.</i></b> The Minister for Resources must return the bond if the Minister is satisfied that the site has been rehabilitated in accordance with the rehabilitation plan or code of practice and that the rehabilitation is likely to be successful.	DJPR is responsible for determining whether rehabilitation is satisfactory and whether the bond should be returned.

MRSDA Section	Description	Role/Responsibility
Section 82(2)	<p>If the land is private land the Minister must consult with the landowner before returning the bond.</p> <p><b>Note:</b> While the requirement to consult on return of the bond is only for private land, DJPR will apply this principle for Crown land under this MoU.</p>	DJPR will consult with DELWP before returning the bond for operations on Crown land.
Section 82(3)	If the land has not been rehabilitated, or requires further rehabilitation, the Minister for Resources can return the bond with the condition to enter into a further rehabilitation bond.	DJPR is responsible for determining whether further rehabilitation is required and a new bond required.
Section 83	<p><b>Minister for Resources may rehabilitate land.</b></p> <p>In certain circumstances, the Minister for Resources may take any necessary action to rehabilitate land and may recover the costs of this if this exceeds the value of the bond.</p>	Where it is determined that rehabilitation will be undertaken, DJPR is responsible for rehabilitation of the site where the operator has not rehabilitated the land satisfactorily.

## **PART A: GENERAL**

### **A.1 CONTACT DETAILS: DJPR OFFICERS AND DELWP CASE MANAGERS**

15. Contact details for communications between DJPR and DELWP under this Schedule are outlined in Table 2.

**Table 2: Contact details: DJPR Officer and DELWP Case Managers**

<b>DJPR Officer</b>	<b>DELWP Case Manager</b>
<b>DJPR Compliance Officer</b> (Regulatory Compliance inbox) <a href="mailto:ERRChiefinspector@ecodev.vic.gov.au">ERRChiefinspector@ecodev.vic.gov.au</a>	Barwon South West <a href="mailto:bsw.planning@delwp.vic.gov.au">bsw.planning@delwp.vic.gov.au</a>
<b>DJPR RLAB Officer</b> (Rehabilitation Liability Assessment and Bonds inbox) <a href="mailto:rlab@ecodev.vic.gov.au">rlab@ecodev.vic.gov.au</a>	Gippsland <a href="mailto:gippsland.planning@delwp.vic.gov.au">gippsland.planning@delwp.vic.gov.au</a>
	Grampians <a href="mailto:grampians.planning@delwp.vic.gov.au">grampians.planning@delwp.vic.gov.au</a>
	Hume <a href="mailto:hume.planning@delwp.vic.gov.au">hume.planning@delwp.vic.gov.au</a>
	Loddon Mallee <a href="mailto:loddonmallee.planning@delwp.vic.gov.au">loddonmallee.planning@delwp.vic.gov.au</a>
	Port Phillip <a href="mailto:pp.planning@delwp.vic.gov.au">pp.planning@delwp.vic.gov.au</a>

### **A.2 COORDINATING MONITORING OF THE PROGRESS OF REHABILITATION ACTIVITIES FOR SITES**

16. For the development and assessment of the rehabilitation plan and setting of the bond please see *Schedule 2.2* and relevant sections of *Schedules 1.1, 1.2* and *1.3*.
17. DJPR undertakes audits of operating sites (including progressive rehabilitation audits) and will provide a relevant audit list to the DELWP Case Manager on request.
18. The DELWP Case Manager can request further information on these audits from DJPR Compliance through [ERRChiefinspector@ecodev.vic.gov.au](mailto:ERRChiefinspector@ecodev.vic.gov.au).
19. If requested by the DELWP Case Manager, the DJPR Compliance Officer will share information on the progress of rehabilitation milestones gathered through audit activities. The DJPR Compliance Officer will ensure that such information will be shared to the extent permitted by the law, in accordance with the Head Document clause 12.1.
20. Where an issue concerning water quality is identified and the information can be legally shared, the DJPR Compliance Officer will notify the DELWP Case Manager and consult with them on remedies, regardless of whether DELWP has requested information on rehabilitation for that site.

21. DJPR is responsible for enforcing rehabilitation requirements under the MRSDA.
22. Where DJPR or DELWP officers observe or are provided information (could include reportable events) in relation to compliance with or progress of rehabilitation activities that may be of interest to the other, the officer will share the information in a timely manner after:
  - (a) considering whether the information can be shared legally under their governing legislation
  - (b) obtaining their organisation's appropriate permissions for sharing the information.

### A.3 REVIEWING AND RETURNING THE BOND

**Note:** This section refers to the situation where the bond is reviewed or returned. This may include the circumstance where the bond is returned and a new bond is set after progressive rehabilitation is assessed. For bond setting as part of a work plan or work plan variation and the transfer of land management responsibilities see *Schedule 2.2 Rehabilitation Approvals and Bond Setting*.

23. The circumstances for DJPR to review bonds for projects on Crown land include but are not limited to:
  - (a) as part of DJPR's bond review program
  - (b) during progressive rehabilitation
  - (c) if non-compliance has been identified which has impacted bond liability
  - (d) if requested to do so by the operator for rehabilitation progress or completion.
24. The DELWP Case Manager may request in writing that the DJPR RLAB Officer review bonds for projects on Crown land by:
  - (a) clearly identifying the site in question
  - (b) providing sufficient information to support the DJPR RLAB Officer's assessment of the request for a review of the bond amount.
25. The DJPR RLAB Officer will consider this information as part of DJPR's bond review program and will notify the DELWP Case Manager on whether and when a bond review will be undertaken.
26. Prior to returning or reviewing the bond related to an earth resource industries activity on Crown land, the DJPR RLAB Officer will undertake an assessment of the rehabilitation works undertaken to verify the extent to which they meet the requirements of the rehabilitation plan or code of practice. The DELWP Case Manager will be consulted during this process.
27. Upon completion of the assessment, and determination of return of the bond, the DJPR RLAB Officer will request feedback from the DELWP Case Manager. This request for feedback should contain:
  - (a) evidence of implementation of the site rehabilitation plan or code of practice requirements, including progress against all objectives and milestones
  - (b) evidence of relevant rehabilitation success, demonstrated by sufficient site monitoring (if required)
  - (c) information on planned future or ongoing monitoring and maintenance arrangements and associated costs (if required and not contained in the work plan)
  - (d) any other information deemed appropriate by the DJPR Compliance Officer.
28. In response to consultation regarding return or review of the bond, the DELWP Case Manager will, within fourteen (14) days:
  - (a) circulate the plan to the appropriate DELWP Action Officers for review (where necessary)
  - (b) advise the DJPR RLAB Officer whether the information contained within the request is of a satisfactory standard for DELWP to provide feedback
  - (c) notify the DJPR RLAB Officer in writing of a request for further information, or

- (d) notify the DJPR RLAB Officer in writing of a request for an extension of time to assess the request for the return or revision of the bond that includes the reason for the extension and a revised date for expected response.
- 29. The DJPR RLAB Officer and DELWP Case Manager will continue to exchange information and responses in a timely manner to ensure that all relevant information is considered in relation to the return or review of the bond.
- 30. If there is no response from the DELWP Case Manager within fourteen (14) days or agreed longer period, the DJPR RLAB Officer will assume that the DELWP Case Manager will not provide comment.
- 31. Following feedback and decision, the DJPR RLAB Officer will notify the DELWP Case Manager in writing on the outcome of the bond review.

#### **A.4 INSUFFICIENT BOND AND/OR REHABILITATION PLAN**

**Note:** This section applies where the approved rehabilitation plan is no longer appropriate for the site in terms of rehabilitation and/or the bond is insufficient. Further rehabilitation work and/or post-closure management arrangements may be required.

- 32. Through compliance and review activities, DJPR will seek to identify issues relating to an insufficient bond and/or rehabilitation plan at an early stage.
- 33. If an insufficient bond or rehabilitation plan is identified, the DJPR Compliance Officer will consult with the DELWP Case Manager on the most appropriate course of action, which may include considering a work plan variation (including updates to the rehabilitation plan), and/or a bond review under relevant sections of the MRSDA in Table 1.
- 34. The DJPR Compliance Officer will notify the DELWP Case Manager of the course of action taken and involve the DELWP Case Manager in accordance with the requirements set out in this Memorandum of Understanding.
- 35. Where a bond has been returned and the rehabilitation has been completed in accordance with the approved rehabilitation plan, yet further rehabilitation is deemed necessary by DJPR and/or DELWP, DJPR will consider options for further rehabilitating the site as per requirements under section 83 of the MRSDA.
- 36. Where DJPR requires further action to rehabilitate the land and there is no licence holder, individual or company that can be allocated responsibility, the site will be classified as an abandoned site and managed in accordance with *Schedule 1.4 Abandoned mines and quarries*.

#### **A.5 SLIMES AND TAILINGS DAMS, AND OTHER FEATURES THAT REQUIRE ONGOING MANAGEMENT AFTER REHABILITATION**

**Note:** As set out in clause 14 and 15 of *Schedule 2.2 Rehabilitation Approvals and Bond Setting*, a key aim of rehabilitation planning is to avoid rehabilitation outcomes that result in ongoing management requirements. However, it is recognised that due to the nature of some earth resource operations that this is not always possible and for some sites on Crown land, these ongoing management requirements may become the responsibility of the state.

37. If DJPR becomes aware of a site or feature on Crown land that, post-rehabilitation, will require ongoing management by the state, the DJPR Compliance Officer will notify the DELWP Case Manager in writing. As far as is reasonably practicable, the notification should include:
- (a) a copy of the approved work plan, including the rehabilitation plan, and associated conditions (where relevant)
  - (b) information on:
    - i. the site/feature i.e. what it is, size, location, surrounding land use etc.
    - ii. anticipated monitoring requirements
    - iii. bonds or funds available
    - iv. risks and/or issues (both existing risks/issues and those that may emerge)
    - v. current Emergency Management Plan
    - vi. factors relevant to the management of the site e.g. consideration of site being declared under section 7C of the MRSDA
    - vii. any other matter requested by the DELWP Case Manager
    - viii. any other matter deemed relevant by the DJPR Compliance Officer.
38. Following notification, the DJPR Compliance Officer and DELWP Case Manager will facilitate consultation between the two departments to resolve management arrangements of the rehabilitated site/feature, including matters relating to:
- (a) insurance and liability (all risk management) pertaining to the site/feature
  - (b) occupation and control of the site/feature
  - (c) ongoing monitoring responsibilities
  - (d) water quality and availability (where relevant)
  - (e) contamination - both surface and subsurface e.g. groundwater plume (where relevant)
  - (f) impacts from failure of the rehabilitated site/feature, including environmental impacts downstream in the event of dam failure, and development of Emergency Management Plans
  - (g) Traditional Owner use and requirements
  - (h) public access and use
  - (i) funding
  - (j) any other matter deemed relevant by DJPR and/or DELWP.
39. The DJPR Compliance Officer and DELWP Case Manager will work together to ensure that consultation and agreement on management arrangements occurs at the earliest practical time after requirements for ongoing management are identified. These matters should be resolved at the point at which formal approval for the associated works is sought by the proponent e.g. lodgment of a work plan or work plan variation (including rehabilitation plan). Refer to Schedules 1.1, 1.2 or 1.3 for work plan and work plan variations.
40. Ongoing management arrangements for a rehabilitated site/feature are only deemed to have been agreed following confirmation, in writing, by both DELWP and DJPR at the appropriate executive level of responsibility.

## **A.6 POST REHABILITATION INCIDENTS AND FAILURES OF REHABILITATION**

41. DJPR and DELWP will work together to resolve responsibilities and agree in writing in the event that:
- (a) following agreement on ongoing management arrangements under Part **A.5**, it is deemed by DJPR or DELWP that further action to rehabilitate the land is required and/or there are additional management issues to those agreed
  - (b) there is an unforeseen or unplanned incident or failure post rehabilitation (e.g. contamination, slumping, failed revegetation works).



**SIGNED ON BEHALF OF DJPR:**

Executed on the 22 day of 06 2022



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Jenine Smith,  
Acting Executive Director, Earth Resources Regulation  
For Department of Jobs, Precincts and Regions

**SIGNED ON BEHALF OF DELWP:**

Executed on the 16 day of 06 2022



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John Bradley,  
Secretary  
Department of Environment, Land, Water and Planning