

Financing and Relinquishment

1. Introduction

This chapter discusses financial arrangements pertaining to the Hazelwood Rehabilitation Project that falls within MIN 5004 and the management of those arrangements as ENGIE Hazelwood relinquishes parts or all of the site.

2. How are financial liabilities for declared mines determined prior to relinquishment?

The re-opened 2015-2016 Hazelwood Mine Fire Inquiry (2015-2016 HMFI) identified that the Government may hold insufficient bonds in respect of the future rehabilitation of the Latrobe Valley coal mines, in the event of any future default. As such, a key recommendation of the 2015 – 2016 HMFI was a review of the rehabilitation bond policy.

The review sought to ensure that the State of Victoria is financially assured that the risk of rehabilitation default and the costs of rehabilitation are borne by the operator; and encouraged progressive rehabilitation and improved rehabilitation planning by mine operators. ENGIE Hazelwood supported the review and has undertaken significant progressive rehabilitation both since privatisation in 1996 and in the period since the 2015-2016 HMFI.

The outcome of this review was the development and implementation of a Rehabilitation Liability Assessment Framework (RLA Framework). ENGIE Hazelwood has worked extensively with the State Government of Victoria to refine and improve the RLA Framework and associated cost calculator.

Another key development following the 2015-2016 HMFI was the release of the Latrobe Valley Regional Rehabilitation Strategy (LVRRS) on 26 June 2020. This State Government strategy was intended to support rehabilitation planning and decision making for the Latrobe Valley's three brown coal mines and

was a response to the Hazelwood Mine Fire Inquiry recommendations from the 2015-2016 HMFI. The LVRRS is overseen by the Mine Land Rehabilitation Authority.

The LVRRS provides foundational policy, principles and actions to guide rehabilitation planning for the Latrobe Valley coal mines. The Strategy recognises that mine rehabilitation is complex and that it involves different risks and opportunities over many decades. It sets out a collaborative pathway for stakeholders to explore key issues with a clear view to ensuring the best possible outcomes for the region.

Thus, under the *Mineral Resources (Sustainable Development) Act 1990* and the associated *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019*, mine operators are obligated to:

- rehabilitate the land that has been mined in accordance with an approved rehabilitation plan approved by the Department Head; and
- enter into a rehabilitation bond with the form and amount to be determined by the Minister for Resources.

This process supports ongoing management of risk for the State whilst a mine is operational and prior to relinquishment.

3. Current rehabilitation bond

ENGIE S. A. is a French multinational electric utility company, headquartered in Paris, which operates in the fields of electricity generation and distribution, natural gas, nuclear and renewable energy. ENGIE S.A. owns 72% of the Hazelwood Power Partnership and the Hazelwood Power Corporation Pty Ltd through its wholly owned subsidiary, International Power (Australia) holdings Pty Ltd.

Mitsui & Co., Ltd is a global diversified trading, investment and services enterprise which is listed on the Tokyo Stock Exchange. It is headquartered in Tokyo and rated by S&P at A/Stable. Mitsui & Co., Ltd owns 28% of Hazelwood Power Partnership through its wholly owned subsidiary, Karugamo Energy Management Ltd.

ENGIE S.A. and Mitsui & Co., Ltd are jointly funding the rehabilitation and remediation of the MIN5004 area according to their respective ownership proportions.

Following the application of the RLA Framework, ENGIE Hazelwood has provided a A\$289 million rehabilitation bond for MIN5004. This bond has been provided to the State Government of Victoria and will be subject to review, based on ongoing progressive rehabilitation and improved technical understanding of outstanding issues.

4. How are financial liabilities for declared mines determined following relinquishment?

In 2022 the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019* were amended to introduce additional requirements in relation to the rehabilitation and closure of for Declared Mines. The amendment regulations commenced on 30 September 2022. The Regulations were amended to prescribe certain matters concerning:

- **declared mine rehabilitation plans** to provide for adequate rehabilitation planning and activities to manage potential risks posed by declared mine land for the closure of a mine on declared mine land,
- **determinations** to provide for the closure of mines on declared mine land and support informed decision-making to ensure that rehabilitation meets legislative objectives and provides a clear and transparent decision-making process, and
- **registration** to provide for declared mine land to be registered and the recording of information and risks about declared mines, supporting fair determinations of contributions to the Declared Mine Fund.

The provisions enable government, mining operators, the community and other stakeholders to make decisions relating to declared mine land and the risks and liability of those land sites.

Registration of Declared Mine Land

Maintenance, monitoring and management of the declared mines will be required for a considerable period after the expected closure of the mines. The amended MRSD Regulations introduce the requirement for require the Mine Land Rehabilitation

Authority (MLRA) to establish and maintain a register of declared mine land so that relevant information can be captured appropriately and retained over time to inform future decisions relating to the use and development of the land.

Declared Mine Fund

A new Declared Mine Fund has been (or will be) established to meet the ongoing costs associated with the post-closure management of declared mine land, or rehabilitation activity when the land is transferred to the future land manager. The amended Regulations set out information that the Minister for Resources must consider in determining the amount to be paid into the Declared Mine Fund.

Specifically, the amended Regulations state that the Minister must consider:

- a. the value of the future costs associated with the monitoring and maintenance obligations under the post-closure plan for the declared mine land; and
- b. the cost of rehabilitating the declared mine land after an adverse event.
- c. Where the Minister determines that the closure criteria have been met, information relating to the declared mine land that is required to be recorded by the MLRA on the declared mine land register is also likely to inform the Minister's decision regarding the amount the declared mine licensee must pay into the Declared Mine Fund (MRSD Regulations, r 64N(c)(iii)).

5. Potential contributions to declared mine fund

At this stage, it is not possible to accurately determine the amount that would need to be contributed by any particular mine operator to the declared mine fund. As such, ENGIE Hazelwood is not proposing to nominate an amount which it considers appropriate for the purposes of managing relevant post-closure monitoring and maintenance obligations. Notwithstanding this, it is possible to consider how such an amount could be calculated.

For instance, a “perpetuity model” could be constructed where an annual dividend is made available to meet monitoring and maintenance costs each year. For example, once the landform is safe, stable, and sustainable, a minimal amount of monitoring and maintenance will be required. For example, if it was determined \$150,000 per annum was needed, with a 5% discount rate and 2.5% consumer price index, we can calculate a \$6.15M lump sum payment would be required, while a \$10.2M lump sum payment would be required to generate \$250,000 per annum, and so on.

At this stage, it is expected that 5 years after active rehabilitation phase is complete, ENGIE Hazelwood will have fully costed all post closure monitoring and maintenance activities and unplanned adverse events using present day valuation, to inform the Minister in determining any amount that ENGIE Hazelwood must contribute to the Declared Mine Fund (at the time of ENGIE Hazelwood’s application for a closure determination).

6. Why is a relinquishment schedule required?

In simple terms, as the rehabilitation works on the site are completed, and the criteria for assessing the success of that work is achieved, parts of the site will no longer need to remain under ENGIE Hazelwood’s control and can be sold or transferred to other parties for alternative future uses. The earlier such transfer occurs, the sooner other users can benefit from and productively use the site. For example, low risk areas, like grazing land, are likely to be available within a relative few years compared to ultimate management of the pit lake, which will require an extended period of monitoring.

As such, ENGIE Hazelwood has developed this relinquishment schedule to assist in communicating to stakeholders how the transition to the post mining land use (PMLU) is likely to progress. Whilst a schedule has been developed for each domain, it is important to appreciate that sub domains or individual land units may follow or trail the proposed schedule. In either circumstance, the schedule supports the relinquishment of individual land units progressively, as it is not expected that ENGIE Hazelwood retain the entire site for the length of the rehabilitation journey.

Thus, this proposed closure approach allows ENGIE Hazelwood to close and rehabilitate zones independently of one another, as closure criteria for the corresponding zones/facilities are achieved and allows for interested third parties to make use of relinquished land, where appropriate. This is a rational approach to managing relinquishment, as the range of maintenance and monitoring, and thus the residual risks, varies considerably across the site. That said, ultimate relinquishment of MIN5004 is not proposed to occur until all domains have met the milestone signifying transition into the post closure phase.

7. Approach to the relinquishment schedule

The relinquishment schedule reflects the range of activities and milestones during the transition towards PMLU. In the context of the DMRP, the following steps are required to achieve relinquishment:

- Meeting closure criteria set for the land unit signifying the milestone for transition into the post closure phase has been met.
- Application to the Minister for closure determination.
- A reduction in ongoing monitoring and maintenance obligations in the post closure phase.
- Eligibility for a reduction of the rehabilitation bond over time, as appropriate.

- Payment into the Declared Mine Fund to fund monitoring and maintenance after relinquishment (post closure) (as determined by the Minister).
- Registration of land in the Declared Mine Register, where required, once the Minister has determined that the closure criteria have been met.

A graph depicting the gradual reduction in the rehabilitation liability for a declared mine over the course of progressive and final rehabilitation works, which reflects the current status of each of the Latrobe Valley mines as at the date of this DMRP, is provided in **Figure 17.1** (sourced from DEECA's Consultation Paper regarding trailing liabilities for declared mines¹):

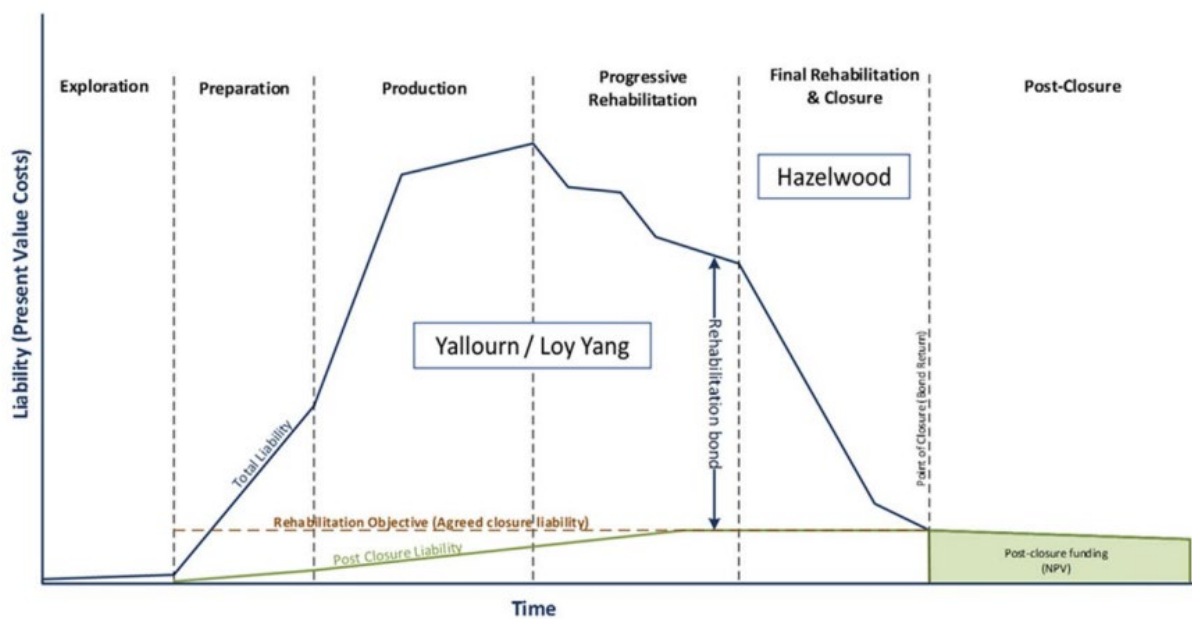


Figure 17.1 - Projected reduction in rehabilitation liability

¹ DEECA, *Trailing liabilities for Victoria's Declared Mines: Consultation Paper (undated)*, available at <https://resources.vic.gov.au/_data/assets/pdf_file/0009/908055/Trailing-Liabilities-for-Victoria's-Declared-Mines-Consultation-Paper.pdf>.

8. Administrative Arrangements

Based on the agreed PMLU identified in *Chapter 6 - Rehabilitation Concept and End Land Use and Land Form*, several administrative arrangements are required to facilitate the intended sequential land use. As the DMRP develops so too will the level of certainty over the PMLU and land manager or owner for each sub domain or individual landform.

During the passive management phase and before relinquishment, the following administrative arrangements will be foreshadowed and agreed with relevant stakeholders in a memorandum of understanding (MOU) – noting that some of these arrangements will be initiated or undertaken in consultation with third parties that propose to implement specific PMLUs at the Hazelwood site:

- Changes to the planning scheme zones and/or overlays to support the agreed PMLU.
- Transfer ownership of freehold land via sale if required.
- Formalise commercial lease arrangements if required.
- Finalise crown land transfer arrangements as required.
- Prepare a report to the future land manager demonstrating all closure criteria have been attained.
- Develop an addendum to the Post Closure Monitoring and Maintenance Plan (PCMMP) specific to the subdomain or land unit being divested. This must be developed in consultation with the future land manager or owner, outlining any ongoing monitoring and maintenance obligations in respect to the land, and any limitations on future use of the land.
- Have the PCMMP Addendum endorsed by ERR, MLRA and the future land manager.
- Finalise any financial arrangements with respect to funding post closure monitoring and maintenance obligations via the Declared Mine Fund.
- Registration of the PCMMP and post closure risk management plan (PCRMP) against the title of any affected land.
- Implement a communications strategy to acknowledge the transfer of land to internal and external stakeholders.

9. Attainment of closure criteria and closure determination

A detailed framework for closure criteria is presented in *Chapter 10 - Framework for Closure Criteria* of the DMRP. This framework sets out the criteria that ENGIE Hazelwood must achieve before relinquishment can be considered.

It should be acknowledged that not all criteria may be achieved at the same time. Whilst revegetation criteria may be achieved relatively early in the passive management phase, the geotechnical criteria may take several more years to be achieved. It is intended that once criteria are achieved, the monitoring and maintenance obligations associated with that aspect of rehabilitation can be reduced to that which is required in the post closure phase.

In preparation for relinquishment, ENGIE Hazelwood will prepare a report for the future land manager, to demonstrate the closure criteria for the sub domain or land unit has been attained. ENGIE Hazelwood will request formal acknowledgement from the future land manager. This endorsement will be provided to the Minister at the time of requesting closure determination under section 84AZY of the MRSD Act (accompanied by the information specified in regulation 64N of the MRSD Regulations), along with:

- An assessment and evidence of closure criteria being met
- An assessment of stakeholder engagement
- Information to enable the Minister to determine the final contribution to the Declared Mine Fund

10. Reduction and return of rehabilitation bond

The rehabilitation bond for Hazelwood has been determined in a form agreed with the State Government. The process assigned costs for each domain, based on activities and requirements to achieve a rehabilitated landform. Once individual activities are completed, ENGIE Hazelwood is able to apply for a reduction in the rehabilitation bond, assuming such a review has not already been completed.

The bond calculator assigns a value for monitoring and maintenance of rehabilitation activities. This is relevant to monitoring and maintenance activities executed during the active rehabilitation and passive management phases of closure. At the attainment of the closure determination, all remaining bond money including that which was held for monitoring and maintenance, will be returned in full to the licence holder. On or before closure determination, the licence holder will lodge the agreed value for post closure monitoring and maintenance activities into the declared mine fund, for use by the future land manager to execute ongoing monitoring and maintenance obligations.

11. Post closure management

The PCRMP and post closure monitoring and maintenance plans (PCMMP) come into effect after the subdomain or individual landform has achieved closure criteria and the Minister has determined that closure has been achieved.

The PCRMP and PCMMP has been prepared in the knowledge that, with the exception of the MLRA, any future land manager who is responsible for managing the land is unlikely to have an appreciation of the history of the site, nor experience in mining in general. The assignment of obligations to the future land manager will occur when the rehabilitation bond is released and when MIN5004 is revoked or is surrendered.

The PCRMP and PCMMP also draw on the knowledge base retained from development of the closure criteria as discussed in *chapter 12 - Management of Rehabilitation and Closure Knowledge*.

12. Scheduling of periodic review

Throughout the implementation of the final rehabilitation works, ENGIE Hazelwood intends to deliver and manage these works in a manner that supports:

- Periodic review of the adequacy of ENGIE Hazelwood's rehabilitation bond for the MIN5004 area at appropriate stages (e.g. through rehabilitation liability assessments under s 79A of the MRSD Act), taking into account the rehabilitation works completed to date and the associated progressive reduction of risks (e.g. following the establishment of the proposed full pit lake landform); and
- Possible opportunities for the reduction of ENGIE Hazelwood's rehabilitation bond and relinquishment of individual land parcels within the MIN5004 area (where possible).

Therefore, periodic reviews of the of the rehabilitation bond will occur over throughout the active rehabilitation phase of the site. It is anticipated that the bond will be reviewed at key junctures. It is important to note the process of setting up a rehabilitation bond is non-trivial and the value of seeking an updated bond is only beneficial where a noted change in value is expected. For this reason, ENGIE expects possible points of review to be:

- Completion of all outstanding earthworks and/ or following commencement of active filling, as part of the active rehabilitation phase – this is likely to be shortly following completion of the EES process;
- Every 3 years during filling as part of the active rehabilitation phase, where stability outcomes confirm the progress towards a safe, stable, and sustainable landform;

- Commencement of the passive rehabilitation phase, at which time no significant further works would be anticipated – this is likely to be 10-15 years following commencement of filling; and
- During the post-closure phase, at which time ENGIE Hazelwood's interests in the site are concluding, should a rehabilitation bond remain in place at the time.

It is anticipated the review could encompass the following key steps.

- Update the rehabilitation concept for landforms based on changing knowledge, stakeholder input or PMLU outcomes
- Quantify the rehabilitation activities successfully completed per domain so that their costs can be deducted from the bond amount,
- Make an assessment of any domains or sub domains that have achieved closure criteria listed in *Chapter 10 - Framework for Closure Criteria* (acknowledging that the Minister will ultimately determine whether ENGIE Hazelwood has met the closure criteria set out within the DMRP)
- Review the outstanding rehabilitation activities yet to be completed
- Use survey data to update the site rehabilitation material balance
- Update any assumptions or design criteria based on newly acquired data or outcomes from previous rehabilitation activities
- Amend the areas, volumes, quantities and unit rates applied in the bond calculation
- Prepare a report summarising the methodology and outcomes of the bond review
- Submit the bond review to ERR

13. Post Closure Monitoring and Maintenance

Following the successful completion of the rehabilitation works, it is expected that ENGIE Hazelwood will seek to relinquish MIN5004 and where relevant initiate transfers of the declared mine land.

At this time, it is expected that ENGIE Hazelwood would cease to be the owner and/or manager of the Hazelwood site, with the cost of any necessary post closure monitoring and maintenance (to the extent not assumed by a subsequent landowner e.g. as party of any divestment) to be funded out of the Declared Mine Fund and administered by a future land manager or MLRA, as deemed appropriate with specific amounts for these activities to be authorised by the Minister.

In applying for a determination that the closure criteria have been met, ENGIE Hazelwood will provide the Minister with information to determine any amount that ENGIE Hazelwood must contribute to the Declared Mine Fund, including:

- a. An estimate of the present value of future costs associated with monitoring and maintenance obligations under the post-closure plan for the declared mine land. This cost estimate is expected to be based on the activities scheduled in Appendix B based on a present-day rate.
- b. Definitions and calculations of the costs of rehabilitating the declared mine land after an adverse event. This cost estimate is expected to be based on the adverse events that have been

foreshadowed in the risk assessment undertaken for the purposes of the DMRP. In identifying the relevant adverse events, ENGIE Hazelwood will consider the risk event in the context of the same event occurring on undisturbed landforms in the region as a result of natural disasters or third-party activities.

In relation to (a) above, the monitoring and maintenance activities have a direct relationship to with the post closure risk management plan. Monitoring will assess the ongoing effectiveness of risk mitigations after relinquishment. A financial estimate for fair and reasonable adverse events that have been foreshadowed in the risk assessment will be used as a basis for the trust contribution.

In determining the test for fair and reasonable *adverse events*, ENGIE Hazelwood will consider the risk event in the context of the same event occurring on undisturbed landforms in the region as a result of natural disasters.

The scope of the required monitoring & maintenance activities, and the degree of risk associated with adverse events, will ultimately depend on observed conditions at the Hazelwood site over the course of ENGIE Hazelwood's final rehabilitation works (both during their implementation, and once the pit lake landform has been successfully achieved). ENGIE Hazelwood's understanding of these activities and events (along with associated cost estimates) will therefore evolve over time.

14. Other financial agreements

It may be appropriate for ENGIE Hazelwood to enter into a commercial arrangement with any relevant future land manager(s) with respect to other PMLUs. These arrangements will likely be foreshadowed by a Memorandum of Understanding with the relevant party, ahead of finalising such arrangements.