

FACT SHEET

Prospecting on a mining lease

March 2021

1. Prospecting on an exploration licence or assessment lease

Pursuant to section 23A of the *Mining Act 1992* (Mining Act) an activity approval from the Minister is required before undertaking ‘assessable prospecting operations¹’ within an exploration licence (EL) area. Section 44A of the Mining Act provides a similar requirement for assessment leases (AL).

To apply for approval, holders of an EL or AL must lodge a completed [Form ESF4: Application to conduct exploration activities](#) with the NSW Resources Regulator.

2. Prospecting on a mining lease

2.1. Mining Act 1992

Prospecting² within the mining lease area is authorised by section 73 of the Mining Act. This means that the holder of a mining lease (ML) may prospect within the area covered by the ML.

Section 81 of the Mining Act provides that the holder of a subsurface ML may (with the consent of the landholder and the holder of an authority or mineral claim in force over the surface) carry out certain activities on the surface of the land in connection with the ML. The activities are prescribed under clause 27 of the Mining Regulation 2016, which includes ‘prospecting operations’.

¹ **assessable prospecting operation** means any prospecting operation that is not exempt development within the meaning of the Planning Act (Dictionary to Mining Act). Exempt development is specified under clause 10 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

² **prospect** means to carry out works on, or to remove samples from, land for the purpose of testing the mineral bearing qualities of the land, but does not include any activity declared not to be prospecting by a regulation under section 11A or by a declaration made under such a regulation. (Dictionary to Mining Act)

In summary, an activity approval under the Mining Act is not required when undertaking prospecting within an area covered by a ML.

2.2. Do the conditions of your mining lease require approval before prospecting?

You should always check the conditions of your mining lease to determine whether an approval is required before prospecting on a mining lease. There are generally two scenarios:

1. The majority of mining leases require the lease holder to comply with an approved mining operations plan (MOP) in carrying out any significant surface disturbing activities, including mining operations, mining purposes and prospecting. In this case, the lease holder is required to apply to the Regulator for approval of a MOP (which includes the proposed prospecting operations) before prospecting.
2. Some older mining leases only require the lease holder to comply with an approved MOP in carrying out mining operations (which excludes prospecting operations). In this case, the lease holder is not required to have an approved MOP in place before prospecting.

2.3. What to check if you need an approved MOP?

If the conditions of the mining lease require a lease holder to comply with an approved MOP in carrying out prospecting operations, then holders should proceed as follows:

- If the proposed prospecting operations are already included in an approved MOP, then it is likely that no further approval is required from the Regulator under the provisions of the mining lease.
- If the proposed prospecting operations are not included in an approved MOP then holders need to lodge a new MOP (or a MOP amendment) with the Regulator for approval.

3. Lodging a MOP with the NSW Resources Regulator

Any MOP (or MOP amendment) lodged with the Regulator needs to comply with [ESG3: Mining Operations Plan \(MOP\) Guidelines \(September 2013\) \(ESG3\)](#).

3.1. What do you need to lodge with the Regulator?

The following should be lodged with the Regulator:

- A MOP that complies with ESG3 and clearly documents the proposed prospecting operations, including the extent and location of the area that will be affected by the prospecting. If this information is to be provided as an amendment to an existing MOP, then the amendments must be clearly marked.
- A rehabilitation cost estimate that includes the estimated cost for rehabilitating the liabilities for all mining operations and prospecting activities. This will enable the Regulator to assess the security bond required to cover the rehabilitation liabilities for all mining and prospecting activities under the lease.
- If the prospecting operations have not previously been assessed and approved (e.g. as part of a development consent) (see Section 3.2), then a completed *Form ESF4: Application to conduct exploration activities* also needs to be lodged. The MOP (or MOP amendment) will need to include reference to any commitments made in Form ESF4 (e.g. compliance with the exploration codes of practice).

All documents associated with the MOP application should be submitted to the Regulator by emailing nswresourcesregulator@service-now.com

3.2. How to check whether the proposed prospecting operations have already been assessed and approved

Clause 6 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* provides that development for the purposes of mineral exploration (i.e. prospecting) may be carried out without development consent.

However, an environmental assessment of any proposed prospecting activity will be required pursuant to Part 5 of the *Environmental Planning and Assessment Act 1979* (Planning Act) unless the proposed prospecting has already been assessed and approved under the Planning Act. The following matters should be considered when considering whether the proposed prospecting operations have already been assessed and approved:

- If the mining operation is subject to development consent, and prospecting is approved under that development consent (either specifically or as ancillary to the use of the land as approved by the development consent) then prospecting may be an activity for which development consent has been obtained. This may include cases where the development consent for mining contemplated that prospecting is ancillary to mining and is directly

related to the mining project (e.g. prospecting within the approved disturbance zones to define the mining operation).

- If the development consent is for underground mining, the development consent may have contemplated prospecting on the surface of the land, if the prospecting is ancillary to mining operations.
- If prospecting is directly related to the mining project (e.g. prospecting activities are being carried out to define the approved mining operation), then it is most likely to be ancillary to the approved mining. Whether or not this is the case will always depend on a careful consideration of the development consent.

If the proposed prospecting is not approved as part of the development consent (as described above), then Part 5 of the Planning Act applies. The Regulator is required to undertake an environmental assessment in accordance with Part 5 before issuing any approval to carry out prospecting operations or any approval of the MOP (see Section 5).

4. What about an EL/AL overlying a ML?

If an EL or AL covers an area situated above the subsurface ML, the following should be considered:

- Where prospecting operations on the surface are only targeting the minerals within the subsurface ML, section 81 applies and an activity approval under sections 23A and 44A of the Mining Act is not necessary. However, the conditions of the ML may require approval of a MOP (refer Sections 2.2 and 3).
- Where prospecting operations on the surface are also targeting the minerals within the EL or AL (i.e. not only minerals within the subsurface ML), section 81 applies AND an activity approval under sections 23A and 44A of the Mining Act is required (see Section 1 above).

5. How does the Regulator deal with MOP applications to include prospecting on a mining lease?

If the proposed prospecting has not already been assessed under the Planning Act and approved (as set out in Section 3.2), then Part 5 of the Planning Act applies. The Regulator is required to undertake an environmental assessment in accordance with Part 5 before issuing any approval to carry out prospecting operations or any approval of the MOP.

The Regulator uses the information provided with the MOP, including the information in [Form ESF4: Application to conduct exploration activities](#) to undertake the Part 5 environmental assessment.

The Regulator may request additional information from the lease holder to assist in the assessment of the application.

The Regulator will provide written notice of its decision, including the reasons for any MOP application refusal.

The MOP approval process is outlined in [ESG3: Mining Operations Plan \(MOP\) Guidelines \(September 2013\)](#).

Additional information

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

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DOC19/1106925