FACT SHEET

Prospecting on a mining lease

May 2017

This fact sheet provides guidance on the approval pathway for prospecting on a mining lease.

1. Prospecting on Exploration Licence or Assessment Lease

Pursuant to section 23A of the Mining Act 1992 (Mining Act), an activity approval from the Minister for Resources is required prior to undertaking “assessable prospecting operations”\(^1\) 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 should lodge a completed Form ESF4: Application to conduct exploration activities with the Department of Planning and Environment (department).

2. Prospecting on Mining Lease

2.1 Mining Act 1992

“Prospecting”\(^2\) 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.

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

2.2 Environmental Planning and Assessment Act 1979 (Planning Act)

An environmental planning instrument may provide that development of specified types may be either “development which may be carried out without the need for development consent” or “exempt development”.\(^3\)

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 will generally be required pursuant to Part 5 of the Planning Act (unless development consent has been granted for such prospecting under the Planning Act).

2.3 What does this mean?

In short, this means that:

- If a 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. In this scenario, further approval under the Mining Act is not required in order to prospect in that area. 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 prospecting is not approved as part of the development consent (as described above), then Part 5 of the Planning Act applies. The

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\(^1\) 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)

\(^3\) Section 76 of the Planning Act.
department is required to undertake an environmental assessment in accordance with Part 5 prior to issuing any approval to carry out prospecting operations or any approval of the Mining Operations Plan (MOP) (see below).

- All ML conditions continue to apply, including compliance with an approved MOP. In most cases the ML condition requires prospecting operations to be identified in the MOP.

3. Prospecting on the surface of a subsurface mining lease

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”.

If a prospecting operation is part of an approved mining project under the Planning Act, the planning control is the development consent granted in relation to that project.

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. If prospecting is directly related to the mining project (e.g. prospecting activities are being carried out to define the current mining operation), then it is ancillary to mining. Whether or not this is the case will always depend on a careful consideration of the development consent.

In these scenarios, further approval under the Mining Act is not required in order to prospect in that area.

3.1 What about an EL overlying a ML?
If an EL or AL covers an area situated above the subsurface ML, the following may 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 is not necessary.

- 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 is required (see Section 1 above).

4. How does the department deal with prospecting on a mining lease?

If prospecting is not approved as part of the development consent, then it will need to be incorporated into the MOP for the relevant ML.

The MOP must include the extent and location of the area that will be affected by the prospecting. If this information is not already in the MOP, then a MOP amendment is required. The department will undertake an environmental assessment pursuant to Part 5 of the Planning Act before approving the MOP or MOP amendment.

A MOP amendment must be submitted to the department and include:

- a completed Form ESF4: Application to conduct exploration activities
- a revised MOP with amendments clearly marked including a reference to any commitments made in Form ESF4 (e.g. compliance with Exploration Codes of Practice)
- a rehabilitation cost estimate (RCE) that includes the estimated cost for rehabilitating the liabilities caused by the prospecting activities. This will enable the department to assess the security bond required to cover the rehabilitation liabilities for all mining and prospecting activities under the authority.

Submit all documents associated with the MOP amendment to the department by emailing minres.environment@industry.nsw.gov.au

Additional information

For further information, contact the Environmental Sustainability Unit within the Division of Resources and Geoscience at: minres.environment@industry.nsw.gov.au

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Disclaimer: This publication provides a general summary of some of the provisions under the Mining Act 1992 and the Environmental Planning and Assessment Act 1979 as interpreted by the Department of Planning & Environment at the time of writing (May 2017). This publication does not provide or purport to provide legal advice. Users are reminded of the need to ensure that the information which they rely is up to date by checking the currency of the information at the Department of Planning & Environment website or the user’s independent advisor.

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