



DOC19/41699

SUSPENSION NOTICE

FILE NO: NCN0005911

TITLEHOLDER: AUS GOLD MINING GROUP PTY LIMITED
(ACN 603 575 917)

AUTHORISATION: Mining Lease No. 1322 (Act 1992)

LEGISLATION: Section 240AA of the *Mining Act 1992*

DECISION-MAKER: Anthony Keon
Chief Compliance Officer
NSW Resources Regulator

SECTION 240AA DIRECTION

As authorised by Section 240AA of the *Mining Act 1992 (Act)*, I Anthony Keon, having delegated authority from the Secretary of the Department of Planning and Environment (**Department**), direct AUS GOLD MINING GROUP PTY LIMITED (ACN 603 575 917) (**AUS GOLD**) to:

“Immediately suspend all operations under Mining Lease No. 1322 (Act 1992), with the exception of those activities required to maintain a safe workplace or to undertake environmental rehabilitation of the mining lease.”

This direction takes effect and is in force immediately upon the titleholder being notified of this decision. The direction remains in force until the suspension notice is revoked or varied by written notice of the Secretary or delegate.

REASONS FOR DECISION

Legislation

1. Section 240AA(1) of the Act provides that the Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:
 - a. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(b)-(g), 203(1)(b)-(e) or (h) or 233(1)(b)-(d), or
 - b. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.
2. Section 380A(1)(c) of the Act provides for a decision to suspend operations under a mining right (being a mining lease) on the ground that, in the opinion of the decision-maker, a holder of a mining right is not a fit and proper person. For the purposes of determining whether a person is a fit and proper person, section 380A(2) of the Act specifies what matters the decision-maker can take into consideration. This includes, inter alia:
 - a. Section 380A(2)(c) – the person's record of compliance with relevant legislation;
 - b. Section 380A(2)(e) – whether, in the opinion of the decision-maker, the management of the activities or works that are or are to be authorised, required or regulated under the mining right are not or will not be in the hands of a technically competent person; and
 - c. Section 380A(2)(m) – whether the person has demonstrated to the decision-maker the financial capacity to comply with the person's obligations under the mining right.
3. Section 240AA(2) of the Act provides that before giving a suspension notice, the Secretary is to:
 - a. cause written notice of the proposed suspension notice and the grounds for it to be served on the holder of the authorisation;
 - b. give the holder a reasonable opportunity to make representations with respect to the proposed suspension notice; and
 - c. take any such representations into consideration.

4. Section 125(1) of the Act sets out a number of grounds for cancellation which can be relied upon when issuing a suspension notice. These include if the decision-maker is satisfied that:
 - a. Section 125(1)(b) – the holder of the authority has contravened a provision of the Act or the regulations (whether or not the holder is prosecuted or convicted of any offence arising from the contravention), and
 - b. Section 125(1)(c) – a person has contravened a condition of the authority (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
5. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister. The Secretary has delegated the functions to suspend all, or any specified, operations under an authorisation or suspend any activity approval relating to the operations under section 240AA of the Act to the Chief Compliance Officer of the NSW Resources Regulator (**Regulator**).

Background

6. Mining Lease No. 1322 (Act 1992) (**ML 1322**) was first granted on 23 July 1993 for the purpose of prospecting and mining for arsenical pyrites, bismuth, cadmium, copper, gold, granite, lead, platinum, silver, sulphur, wolfram [tungsten and its ores] and zinc.
7. On 11 June 2014, ML 1322 was renewed until 22 July 2024.
8. On 26 June 2015, ML 1322 was transferred to AUS GOLD.
9. ML 1322 is located approximately 26 km South-West of Tibooburra.
10. Ms Sha (Sally) Zou is the sole director and shareholder of AUS GOLD.

Grounds of Suspension

11. On 21 December 2018, I wrote to AUS GOLD in accordance with section 240AA(2) of the Act, inviting a submission in response to my proposed decision to issue a direction to suspend all operations on ML 1322 by no later than 4.30pm on 25 January 2019. Included in this correspondence was a statutory notice issued under section 240(1)(a), 240(1)(c) and 240(2A) of the Act, reference number NTCE0001179; and three penalty notices relating to the breaches outlined at paragraphs 17, 26 and 33.

Breach of Condition 3 – Mining Operations Plan

12. Condition '3. Mining Operations Plan and Annual Rehabilitation Report' was imposed on ML 1322 at the time of renewal, being 11 June 2014, and continues to have effect.
13. Condition 3(a) states that *"The leaseholder must comply with an approved Mining Operations Plan (MOP) in carrying out any significant surface disturbing activities, including mining operations, mining purposes and prospecting."*

14. On 5 September 2018, the Regulator conducted a performance assessment inspection of ML 1322 where it was noted that the disturbance footprint was larger than the footprint approved in the MOP.
15. A review of operations confirmed that the following work had been conducted, contrary to the approved MOP:
 - a. A slimes (sediment) storage dam constructed within the corridor of an ephemeral watercourse.
 - b. Two locations where surface disturbance, excavation or extraction has occurred within the corridor of an ephemeral watercourse contrary to the MOP.
16. On 10 October 2018, Mr Luming (Louis) Liu responded to statutory notice reference number DI 0805 2018, issued against AUS GOLD on 27 September 2018, under section 248B(1) of the Act. In this response, Mr Liu confirmed the before mentioned surface disturbance, however refuted the construction of the slimes (sediment) storage dam within the corridor of an ephemeral watercourse. In this response, Mr Lui stated:

"In accordance with the approved MOP the mining commenced in the northern section of the mine site and progressed sequentially taking topography into consideration, generally starting from low ground working up slope. Please see the attached the most recent MOP for your reference. On page 46 of the MOP, we could see all disturbances were within the approved extraction area.

At "Point A" on Annexure A this is not a tailing dam for the intentional containment of slimes. But this water holding dam did receive a large amount of water with a high concentration of mud in suspension that overflowed from the main tailings dam. This was designed to stop any risk of this water escaping into the natural drainage. Once the approved second settling dam is completed this dam area will be cleaned out back to original condition and only used for water that has settled and ready for recirculation.

Due to an exemption provided by the Water Management (General) Regulation 2011 (WM Reg), a Controlled Activity Approval (CAA) is not required for activities approved under the MOP (Report No. 923/04 – v2.1). This exemption was provided in a Department of Industry letter dated 26 February 2018, reference 85WA753788:85 ERM2015/0718 (see attached)."

17. On 21 December 2018, penalty notice No. 3149610934 was issued against AUS GOLD for a contravention of section 378D(1) of the Act.

Breach of Condition 5 – Environmental Incident Report

18. Condition '5. Environmental Incident Report' was first imposed on ML 1322 at the time of renewal, being 11 June 2014.

19. On 19 February 2018 condition 5 was varied to state:

“The lease holder must provide environmental incident notifications and reports to the Secretary no later than seven (7) days after those environmental incident notifications and reports are provided to the relevant authorities under the Protection of the Environment Operations Act 1997.

Definitions

Environmental incident notifications and reports means any notifications and reports required to be provided to relevant authorities under Part 5.7 or Part 5.7A of the Protection of the Environment Operations Act 1997.”

20. Part 5.7 of the *Protection of the Environment Operations Act 1997* includes the notification of incidents where material harm to the environment is cause or threatened. Further, material harm involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial.
21. The inspection conducted by the Regulator on 5 September 2018 identified more than 25 kangaroos that had become trapped in the slimes and died. In addition, an infant kangaroo was observed to be trapped in the slimes and was clearly in distress. No action was able to be taken to assist the kangaroo due to safety risks.
22. On 26 September 2018, a statutory notice issued under section 240(1)(b) of the Act, reference number DI 0799 2018 directed AUS GOLD to install appropriate barriers to eliminate all risks to herbivores within the footprint of ML 1322, including all dams, water and tailings storages by 29 October 2018.
23. On 10 October 2018, Mr Liu responded to statutory notice reference number DI 0805 2018, issued against AUS GOLD on 27 September 2018, under section 248B(1) of the Act. In this response, Mr Liu stated:

“The company started processing on 17th April and suspended operation on 31st July.

Soon after 17th April, it was noticed that individual kangaroos tended to approach the tailing dam and would occasionally get stuck in slimes.

Between 17th April and 31st July, a total of 4 individual kangaroos were rescued from tailings dam but they unfortunately did not survive.

Between 17th April and 31st July, a total of 6 individual kangaroos drowned and were left in the tailings dam. It was too dangerous to recover the bodies.”

In addition, Mr Lui confirmed that these incidents were not reported as *“The company was not aware of the obligation of reporting such situation”*.

24. On 29 October 2019, Mr Liu responded to statutory notice reference number DI 0799 2018 with evidence of the instillation of an exclusion fence on ML 1322.
25. An inspection was conducted by the Regulator on 31 October 2018 which confirmed compliance with statutory notice reference number DI 0799 2018.

26. On 21 December 2018, penalty notice No. 3149610943 was issued against AUS GOLD for a contravention of section 378D(1) of the Act.

Breach of Clause 7A of Schedule 1B to the Act – Suspension of Operations

27. Pursuant to clause 7A of Schedule 1B to the Act, a mining lease is subject to a condition that the holder of the lease may suspend mining operations in the mining area only if the operations are suspended in accordance with the written consent of the decision-maker.
28. The site inspection conducted by the Regulator on 5 September 2018 confirmed that mining operations had commenced on 25 February 2018 and were subsequently suspended in July 2018.
29. On 7 September 2018, a statutory notice issued on AUS GOLD under section 191 of the *Work Health and Safety Act 2011*, reference number N191-2018/00591, required amongst other things, notification of the suspension of mining operations, a requirement under clause 129 of the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (WHS Regulation).
30. On 20 September 2018, AUS GOLD complied with this notice and notified the Regulator of the suspension, stating that:

"The suspension of Good Friday Gold Mine ML 1322 was started on 31 July 2018. Aus Gold Mining Group met some financial difficulties because China implemented significant changes to its Foreign Exchange Control Policies earlier this year, which has made it much more difficult and time-consuming to transfer money from China to overseas. As a foreign investor, Ms. Zou, the 100% shareholder and sole Director of Aus Gold Mining Group, was also affected.

There are not any current operations at Good Friday Mine Site at this moment. Ms Zou is trying her very best to restart this project ASAP in the near future.

Aus Gold Mining Group will send notifications as required before recommencement of Good Friday Gold Mine."

31. On 10 October 2018, Mr Liu responded to statutory notice reference number DI 0805 2018, issued against AUS GOLD on 27 September 2018, under section 248B(1) of the Act. In this response, Mr Liu confirmed the notification of the suspension of mining operations on 20 September 2018 pursuant to the WHS Regulation.
32. A review of Departmental records found no application had ever been made by AUS GOLD to obtain written consent to suspend mining operations in accordance with clause 7A of Schedule 1B of the Act.
33. On 21 December 2018, penalty notice No. 3149610952 was issued against AUS GOLD for a contravention of section 378D(1) of the Act.

Technically Competent Person

34. The Regulator was notified that the mine commenced operations on 25 February 2018, with Mr Hercules Smit holding the key statutory position of Quarry Manager (surface only).

35. On 5 September 2018, whilst conducting the performance assessment of ML 1322, the Regulator was advised of the following
- a. Key staff, including the General Manager and executive team, mine staff and all contractors were laid off;
 - b. Expert personnel to manage the mine and formulate operational solutions to problems (i.e. slimes management) were no longer employed at the mine;
 - c. The inability to remove water from the fine tailing (slimes) had hampered the operations, including technical difficulties experienced with the mining methodology and process circuit.
36. On 19 October 2018, the Regulator was advised by Mr Smit that he had resigned from AUS GOLD and that any issues should be directed to Ms Zou, or Mr Luming (Louis) Liu.

Financial Capacity

37. On 5 September 2018, whilst conducting the performance assessment of ML 1322, the Regulator was advised of the following:
- a. Staff have not been paid for 3 months and have either left the company or have been laid off;
 - b. Staff reported that AUS GOLD owes significant amounts of money to business across the region.
38. On 20 September 2018, in notifying of the suspension of operations, AUS GOLD advised that the suspension was a result of *“some financial difficulties because China implemented significant changes to its Foreign Exchange Control Policies earlier this year, which has made it more difficult and time-consuming to transfer money from China to overseas.”*
39. An article published on the ABC NEWS website www.abc.net.au on 7 December 2018, titled ‘AusGold’s Sally Zou faces another set of disgruntled workers who say they haven’t been paid since June’ (<https://www.abc.net.au/news/2018-12-07/more-ausgold-workers-say-they-are-owed-wages/10591222>) alleges that AUS GOLD is facing legal action taken by eleven employees who claim to have not been paid since June, and up to their termination in October.
40. In addition, a previous article published on the ABC NEWS website on 14 November 2017, titled ‘Sally Zou: The Chinese mining magnate who paid workers with a bag full of cash’ (<https://www.abc.net.au/news/2017-11-14/sally-zou-mining-magnate-liberal-party-donor/9125672>) also raised concerns regarding the payment of staff and the management of the company’s finances by former AUS GOLD accountant, Peter Johnston.

Representations

41. On 5 January 2019, Mr Liu responded by way of email, advising that the three penalty notices had been paid in full.
42. No submissions were received from AUS GOLD about my proposed decision to issue a suspension notice to the company in relation to ML 1322.
43. On 29 January 2019, the Regulator contacted both Ms Zou and Mr Liu by telephone to confirm that no representations were being made by AUS GOLD with respect to the proposed suspension notice.

Considerations

44. I have closely considered the evidence before me, and in doing so I have given due regard to the seriousness of the offending and the further works required to bring AUS GOLD into compliance.
45. After careful consideration, I am satisfied that AUS GOLD contravened statutory conditions of its authorisation for the three matters specified above. These matters constitute offences under section 378D(1) of the Act 'Contravention of condition of authorisation – offence by holder'.
46. I note that penalty notices were issued for all three matters and consider this enforcement action to be an appropriate regulatory response.
47. Contravening a provision of the Act or a condition of the authorisation constitutes grounds for the decision-maker to cancel an authorisation, pursuant to section 125(1)(b) and 125(1)(c) of the Act. Accordingly, these matters are relevant considerations.
48. Additionally, I have given serious consideration to a number of factors to form an opinion whether AUS GOLD is a fit and proper person for the purpose of section 380A of the Act. In doing so I have had regard to the following considerations:
 - a. AUS GOLD's non-compliance with the Act, in particular the three breaches of section 378D(1) of the Act.
 - b. Whether the management of activities or works authorised under ML 1322 is in the hands of technically competent person.
 - c. Whether AUS GOLD has the financial capacity to comply with its obligations under the mining right.
49. Having regard to the material before me, I have formed the opinion that the management of mining activities authorised under ML 1322 is not in the hands of a technically competent person. Further, AUS GOLD has failed to demonstrate its financial capacity to comply with its obligations under the Act. Finally, I am satisfied that AUS GOLD has failed to comply with section 378D(1) of the Act on three occasions.
50. I also note that the statutory notice issued under section 240(1)(a), 240(1)(c) and 240(2A) of the Act, reference number NTCE0001179, attached to my letter of

21 December 2018, requires AUS GOLD to take the following steps to give effect to condition 3(a), address the adverse impact and return to compliance:

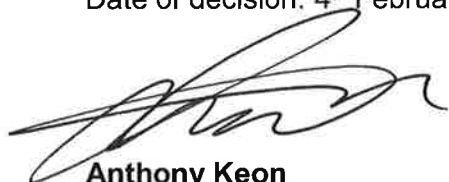
- a. Appoint a suitably qualified independent expert to complete a site-based performance and risk assessment of surface disturbances occurring within the authorisation area of ML 1322 to identify adequate control measures to be employed to prevent and/or mitigate environmental harm by 29 January 2019.
- b. Submit the report completed by the suitably qualified independent expert that details the findings of the site-based performance and risk assessment including the controls to be implemented to prevent and/or mitigate environmental harm identified during the assessment. The report must be to the satisfaction of the Department and must be submitted electronically to the Department by 29 February 2019.
- c. Submit a report to the Department that details the proposed control measures to be implemented to prevent and/or mitigate environmental harm identified by the suitably qualified independent expert and must be submitted electronically to the Department by 14 March 2019.

Conclusion

51. Based on the material before me, I am satisfied that circumstances exist that constitute a ground for cancellation of ML 1322 under section 125(1)(b) and 125(1)(c) of the Act.
52. It is also my opinion that AUS GOLD is not currently a fit and proper person pursuant to section 380A(1) of the Act.
53. In making my decision I have given due regard to the seriousness of the contraventions and AUS GOLD's ability to comply with its legislative, financial and technical obligations under the Act.
54. Having carefully considered the regulatory options available to me, I am satisfied that the above grounds warrant the issuing of a direction to AUS GOLD to suspend all operations on ML 1322, with the exception of those activities required to maintain a safe workplace and/or to undertake environmental rehabilitation of the mining lease.
55. I am satisfied that the requirements of section 240AA(2) of the Act to notify the titleholder in writing of my proposed decision to issue a suspension notice have been met. AUS GOLD was afforded reasonable opportunity to make a submission about my proposed decision and it did not respond.
56. I believe that AUS GOLD has been afforded procedural fairness in respect of my decision to issue a suspension notice.
57. Accordingly, I have determined to issue this suspension notice under section 240AA(1) of the Act.
58. The suspension notice takes effect and is effective immediately upon AUS GOLD being notified of the decision and will remain in force until such time as the suspension notice is revoked or varied by written notice of the Secretary or delegate.

59. Consideration will be given to revoking the suspension notice once AUS GOLD completes all of the following steps:
- a. Commission a suitably qualified independent person, to the satisfaction of the Secretary, to conduct a review of AUS GOLD systems and processes for meeting its compliance obligations under the Act. The review is to consider causal factors for the non-compliance and make recommendations for improvement.
 - b. Commission a suitably qualified independent person, to the satisfaction of the Secretary, to undertake a review of AUS GOLD's current and ongoing financial capacity. This review must set out the findings of the review and any recommendations concerning the financial capacity of AUS GOLD to meet their future obligations under the Act. The review must be carried out by a qualified party that is independent to AUS GOLD's normal accountants.
 - c. Submit a detailed report, to the satisfaction of the Secretary, that details:
 - i. key findings and responses to any issues and recommendations arising from the reviews undertaken at point 1 and 2 above (including copies of both reports);
 - ii. likely financial and other compliance obligations arising from the reviews; and
 - iii. systems and processes in place to ensure future and ongoing compliance with such obligations.
 - d. Comply in full with statutory notice, reference number NTCE0001179.
 - e. Appoint a technically competent person to manage activities or work authorised under ML 1322.
 - f. Demonstrate that it can achieve compliance with the Act and *Mining Regulation 2016*.
 - g. Demonstrate that it has the financial capacity to manage activities or work authorised under ML 1322.

Date of decision: 4th February 2019



Anthony Keon
Chief Compliance Officer
NSW Resources Regulator

RIGHT OF REVIEW

Should you be aggrieved by this decision, you may apply to the Land and Environment Court for a review of the decision maker's opinion. For further information visit www.lec.justice.nsw.gov.au.

Note: In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator's website: resourcesregulator.nsw.gov.au

WARNING AND INFORMATION ABOUT THIS NOTICE

- It is an offence under section 240C of the *Mining Act 1992* to fail to comply with this direction.
- The maximum penalty for this offence is, for a corporation, \$1,100,000 and a further \$110,000 for each day the offence continues, and, for a natural person, \$220,000 and a further \$22,000 for each day the offence continues.
- An offence against section 240C may attract executive liability against a director of the corporation, or an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation – section 378F of the *Mining Act 1992*.
- If you fail to take the measures specified above, the Minister may take any action necessary to give effect to the direction including authorising another person to take those measures and recover the costs and expenses so incurred from you, or applying to the Land and Environment Court for an injunction directing you to comply with this direction – section 241 of the *Mining Act 1992*.
- The serving of this direction and the matters required of you pursuant to this direction in no way preclude, hinder or otherwise restrain the Department of Planning and Environment from taking further action against you including by commencing legal proceedings.
- This notice issued under section 240AA of the *Mining Act 1992*.
- The words and expressions used in this direction have the same meaning as they have in the *Mining Act 1992*.