

Fact sheet

Prospecting on a mining lease

October 2022

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Provisions of the Mining Act 1992

The provisions of the *Mining Act 1992* (the Act) that relate to prospecting¹ on a mining lease can be summarised as follows:

- prospecting within a mining lease area is authorised by section 73 of the Act. This means that the holder of a mining lease may prospect within the area covered by the lease.
- Section 81 of the Act provides that the holder of a subsurface mining lease 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 mining lease. The activities are prescribed under clause 27 of the Mining Regulation 2016, which includes ‘prospecting operations’.
- pursuant to Schedule 1B of the Act, mining leases include a range of conditions that are imposed by the decision-maker upon grant, renewal and/or transfer.

In summary there are no express provisions in the Act which require approval from the department prior to prospecting on a mining lease. However, the conditions of mining leases may impose such a requirement.

Do the conditions of a mining lease require approval prior to prospecting?

You should always check the conditions of your mining lease to determine your approval obligations regarding prospecting. Mining leases typically include the following condition:

4. Assessable prospecting operations

(a) The lease holder must not carry out any assessable prospecting operation on land over which this lease has been granted unless:

- (i) it is carried out in accordance with any necessary development consent; or*
- (ii) if development consent is not required, the prior written approval of the Minister has been obtained.*

(b) The Minister may require the lease holder to provide such information as required to assist the Minister to consider an application for approval.

(c) An approval granted by the Minister under this condition may be granted subject to terms.

¹ **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 1992*).

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(d) *The lease holder must comply with the approval granted to the holder under this condition.*

‘Assessable prospecting operation’ means any prospecting operation that is not exempt development² within the meaning of the *Environmental Planning and Assessment Act 1979*. Development for any of the following purposes is exempt development if it is of minimal environmental impact and not within an environmentally sensitive area of State significance:

(b) *low intensity activities associated with mineral exploration or petroleum exploration, including the following –*

(i) *geological mapping and airborne surveying,*

(ii) *sampling and coring using hand-held equipment,*

(iii) *geophysical (but not seismic) surveying and downhole logging,*

(iv) *accessing of areas by vehicle that does not involve the construction of an access way such as a track or road.*

In summary, approval is required prior to the carrying out of ‘assessable prospecting operations’ unless they have already been approved pursuant to a development consent.

How to check whether assessable prospecting operations have already been approved under a development consent

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 a 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 (e.g. resource definition drilling to inform underground mine planning).
- 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 then you will need to lodge an application with the NSW Resources Regulator and obtain approval.

Lodging an application for approval to prospect on a mining lease

Applications to prospect on a mining lease can be lodged online via the [Regulator Portal](#) using the Assessable Prospecting Operation application form (APO). The APO asks specific questions about the proposed activity, with the answers identifying the level of assessment required. The APO also identifies when additional supporting information must be submitted to satisfy relevant statutory requirements.

Details regarding the assessment and determination process are provided on our [website](#).

2 Refer to clause 2.13 of *State Environmental Planning Policy (Resources and Energy) 2021*

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What about an exploration licence/assessment lease overlying a mining lease?

Approval from the Minister is required prior to undertaking assessable prospecting operations on an exploration licence (EL) or assessment lease (AL) (sections 23A and 44A of the Act, respectively).³

If an EL or AL covers an area situated above the subsurface mining lease, the following provisions apply:

- where the prospecting operations on the surface are only ‘testing the mineral bearing qualities of the land’ within the subsurface mining lease, then approval to carrying out assessable prospecting operations will be required. In addition, section 81 of the Act applies and the consent of the landholder (and the holder of an authority or mineral claim in force over the surface) will be required. However, approvals under either section 23A (for an EL) or 44A (for an AL) of the Act are not required. This is because the prospecting operations are only targeting the mineral bearing qualities of the land within the mining lease (not within the EL / AL).
- where prospecting operations are targeting the minerals within both the EL / AL and the subsurface mining lease, then:
 - the approval requirements under section 81 of the Act apply, and
 - the approval of the Minister will be required under sections 23A / 44A of the Act to prospect on the relevant EL / AL and
 - the approval of the Minister will be required (under the conditions of the mining lease) to prospect on the mining lease.

Further information

NSW Resources Regulator – 1300 814 609 or nswresourcesregulator@service-now.com

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³ Applications to carry out assessable prospecting operations on an EL or AL are lodged via the [Regulator Portal](#) using the online form ‘Application to undertake Assessable Prospecting Operations’.