

# Guideline

## Exploration – Extracting a bulk sample

2/12/2024

### Exploration on an exploration licence, assessment lease or mining lease

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

A mining lease granted under the Mining Act is subject to a condition that the holder must not carry out any assessable prospecting operations on land over which the title has been granted unless:

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

**Assessable prospecting operation** means any prospecting<sup>1</sup> operation that is not exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*. Exempt development is specified under clause 2.13 of *State Environmental Planning Policy (Resources and Energy) 2021*.

Exempt development includes certain low impact exploration activities with minimal environmental impact (such as mapping, aerial surveys, sampling and coring using hand-held equipment). These minimal impact activities do not require further environmental assessment or approval before being carried out.

To apply for approval to undertake assessable prospecting operations, holders of an EL, AL or ML must complete the online *Application to undertake assessable prospecting operations* via the [Resources Regulator Portal](#).

Applications are subject to an environmental assessment as set out in Part 5 of the *Environmental Planning and Assessment Act 1979* (Planning Act). This requires the Regulator to examine and

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<sup>1</sup> *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).

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consider all matters affecting, or likely to affect, the environment by reason of the activity, before granting an approval.

Further details are provided in *Exploration guideline: Application and assessment process for exploration activities* available at [www.resourcesregulator.nsw.gov.au](http://www.resourcesregulator.nsw.gov.au)

### What is a bulk sample?

The term 'bulk sample' is not defined in the Mining Act, the Planning Act or any other relevant legislation or instrument.

Prospecting may include extracting samples of material from the land to facilitate the testing, processing and assessment of the ore extracted. This is referred to as a 'bulk sample'.

Before applying to develop a mine, an explorer may extract a bulk sample of the material to be mined to further test the ore and refine the proposed mining procedures. There are typically two types of bulk sampling:

- the excavation of a small open cut from the surface to extract the material required for testing.
- the extraction of material from underground. This may comprise a small underground operation or an exploration decline from an existing above/below ground mining operation.

### What approvals are required to extract a bulk sample of more than 20,000 tonnes of ore?

Clause 2.9(1)(f) of *State Environmental Planning Policy (Resources and Energy) 2021* requires development consent prior to 'extracting a bulk sample as part of resource appraisal of more than 20,000 tonnes of coal or of any mineral ore'. Furthermore, extracting a bulk sample as part of resource appraisal of more than 20,000 tonnes of coal or of any mineral ore comprises a state significant mining development<sup>2</sup>.

In such cases, a development application would need to be lodged with the relevant consent authority (the Department of Planning, Housing and Infrastructure). Approval would be required from the Minister for Planning (or delegate) before extracting the bulk sample.

In addition to obtaining development consent, the extraction of a bulk sample of more than 20,000 tonnes of coal or mineral ore on a prospecting title<sup>3</sup> (such as an exploration licence or assessment lease) will also require an activity approval to carry out an 'assessable prospecting operation' under sections 23A or 44A of the Mining Act. This application should be lodged after obtaining development consent<sup>4</sup> by completing the online *Application to undertake assessable prospecting operations* via the [Resources Regulator Portal](#).

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<sup>2</sup> Clause 5 in Schedule 1 of *State Environmental Planning Policy (Planning Systems) 2021*.

<sup>3</sup> This requirement does not apply to a bulk sample on a mining lease once development consent has been granted.

<sup>4</sup> Once development consent has been granted then Section 5.1(1)(g) of the Planning Act exempts the activity from a Part 5 Assessment.

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### What approvals are required to extract a bulk sample of less than 20,000 tonnes of ore?

The extraction of a bulk sample of less than 20,000 tonnes of coal or any mineral ore, as part of a resource appraisal, would comprise prospecting. The holders of an EL, AL or ML would need to lodge a completed *Application to undertake assessable prospecting operations* via the [Resources Regulator Portal](#) and obtain approval for an assessable prospecting operation.

If, in reviewing the application, the Regulator forms the opinion that the activity is likely to significantly affect the environment, an environmental impact statement (EIS) must be prepared<sup>5</sup>. The purpose of an EIS is to provide a thorough public examination of a proposed activity that is likely to have a significant impact on the environment, and to inform a decision as to whether that activity should proceed.

If an activity is likely to significantly affect threatened species or ecological communities (or their habitats), a species impact statement<sup>6</sup> (SIS) is required to be considered as part of the activity assessment process.

Further details are provided in *Exploration guideline Application and assessment process for exploration activities* available at [www.resourcesregulator.nsw.gov.au](http://www.resourcesregulator.nsw.gov.au)

### What if the ore extracted needs to be tested off title?

Prospecting, including extracting a bulk sample, typically includes taking samples from the land and the testing, processing and assessment of the ore extracted.

In some cases this testing/processing/assessment will take place within the boundaries of the EL, AL or ML and details will need to be included in the application lodged with the Regulator. When determining the application, the Regulator will undertake an assessment of all the relevant environmental impacts associated with the testing, processing and assessment of the ore and the storage and rehabilitation of the waste rock material.

If the testing/processing/assessment of the ore is to be undertaken outside of the boundaries of the EL, AL or ML then the title holder may require separate approvals from other agencies, including development consent under the Planning Act.

### Minimising environmental impacts

The scale of environmental impacts arising from bulk sampling can be significant and should be minimised wherever possible. Title holders should ensure the size of the bulk sample (i.e. the amount

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<sup>5</sup> Section 5.7(1) of the *Environmental Planning and Assessment Act 1979*.

<sup>6</sup> The form, content and process for preparing a SIS are set out in the *Biodiversity Conservation Act 2016* or the *Fisheries Management Act 1994* (as applicable to the impacted species).

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of material excavated) and the associated environmental impacts are appropriate to the type of ore being tested.

The ore to waste material ratio should be minimised and detailed in any application lodged with the Regulator. For example:

- for coal, a large bulk sample across various parts of the EL/AL/ML may be appropriate as a significant amount of overburden may need to be removed to facilitate extracting and testing the ore
- for dimension stone, a smaller bulk sample would be appropriate as there is generally less waste material (i.e. most of the material excavated will be stone and excavating more will not alter the results of resource assessment/testing).

Title holders must also provide details in their application of what will happen to the waste material and ore after it is tested to ensure any associated environmental impacts can be assessed.

Applications for underground bulk sampling should ensure that the full range of impacts outlined in section 2.9.2 of *Exploration guideline Application and assessment process for exploration activities* are addressed.

## Limitations on bulk sampling

Once approval to extract a bulk sample has been granted, the holders of an EL, AL or ML can only carry out the activity for the purpose of testing the mineral-bearing qualities of the ore extracted (i.e. prospecting). **The approval does not extend to the sale of any material removed from the land as a result of the activity.**

## Further information

NSW Resources Regulator – 1300 814 609 or email [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com)

[www.resourcesregulator.nsw.gov.au](http://www.resourcesregulator.nsw.gov.au)

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