

Operational Policy

Deciding the Term of a Mining Lease

MIN/2016/3088

Purpose

The purpose of this policy is to provide information on how the Minister will determine the term of a mining lease (ML) at either grant or renewal. Specifically it is designed to:

- provide guidance to both applicants and departmental officers;
- promote consistency of permit administration and regulation;
- promote the purpose and objectives of the resource legislation; and
- improve the department's capacity to process permit applications.

The information provided in this policy **does not limit the exercising of discretion** and does not override legislative requirements. It reflects current practices within the department which may change from time to time. Any changes will be published through a revised version of this policy.

Relevant Legislation

This policy applies to the grant and renewal of a ML¹ under the Mineral Resources Act 1989.

The policy does not limit the Minister's discretion to decide the term of ML as per sections 271(b), 284(1) and 286A (1) (c) of the Mineral Resources Act 1989.

Background

Prior to the introduction of the *Mineral Resources Act 1989* (MRA), mining lease (ML) terms were limited to 21 years. Under the current framework, there is no limit to the term of a ML. The granted term of a ML is at the discretion of the Minister who, pursuant to sections 271(b), 284(1) and 286A (1) (c) of the MRA, must consider if the nominated term for the ML is appropriate. If the Minister considers the term appropriate the Minister will grant the ML for that term. If the Minister does not consider the term appropriate, the ML will be granted for a term determined by the Minister.

Since 1989, the median term of an ML is 20 years, however as the scale of mining projects have increased, mining applicants are now applying for longer terms for MLs.

Lengthy ML terms may restrict the department's ability to review mining operations. Periodic reviews provide an opportunity to ensure that mines continue to operate in the best interests of the state, the company and the community. This is because following the grant of an ML the Minister is not in a position to amend the conditions of an ML (without the holder's consent) until the renewal period.

The MRA specifically provides for the renewal of a ML, and the renewal application provides an important window for the Minister and the ML holder to review the progress of the mining operation. This process ensures the ML is progressing in line with the government's expectations by allowing the Minister and the department to review and assess the development and production of a mine. It allows the Minister to place conditions on the ML if

¹ This operational policy only applies to the *Mineral Resources Act 1989* and does not apply to any special agreement Acts.

required and ensures that a ML's mining operations remain in the best interests of the state, the company and the community.

Important Note: The examples contained in the following section are indicative only and not proscriptive. The decision of what information to provide in support of any specific ML term rests with the applicant.

Policy Determination

1. Under sections 245(1) (m) and 286 (2) (c) of the MRA, all applicants are required to identify the term of the proposed ML and renewal of a ML and provide reasons for the length of term that they are seeking.
2. Under sections 271(b), 284(1) and 286A (1) (c) of the MRA the Minister must consider the matters specified in the application, including whether the term sought is appropriate.
3. An ML application should contain information that substantiates the ML term requested. The information will need to demonstrate why the ML term is appropriate with proper regard for the overall development and operation of the proposed ML.

If an ML applicant is relying upon factors and arrangements that they believe would have a significant bearing on the decision relating to the term, then the department will require this information. The Minister retains his discretion under the MRA to consider additional matters.

4. By way of examples, information in an application may include, but is not limited to:
 - A mining operations plan that includes a mining program or life of mine schedule that supports the ML term. This may include timeframes for proposed development of the mine and related infrastructure, the timing and rate of production, and rehabilitation plans².
 - Resource and reserve information and feasibility studies that clearly demonstrate an economically robust and sustainable mining operation. Reports should be prepared by or under the direction of and signed by a qualified person i.e. a person who is a member of a professional society for earth scientists or mineral engineers, or has other appropriate qualifications.
 - Negotiated sale/supply contracts that are dependent on a guaranteed supply of mineral for at least the term being sought by the holder.
 - Financial capability information and statements which demonstrate that the applicant and/or related third party investors, lenders or joint venture partners have the financial capability to carry out development, operations and rehabilitation for the term being sought.
 - Information to support a claim that a specific ML term is required in order to gain a return on pre-mine investment. For example, a timeline used to demonstrate how the applicant would obtain a return on their investment over the course of the nominated term.

² Note: provision of a defined life of mine on its own may not in itself equate to an appropriate term. This is because the MRA specifically caters for the renewal of MLs to ensure a mining operation can progress through its planned life cycle.

- Details of any supporting infrastructure such as housing, roads, rail lines, ports and other regional projects that is required for the ML and whose cost will need to be amortised over the requested ML term.
5. Without limiting the Minister's discretion under the MRA, the Minister will generally not grant a ML term that exceeds the average historical term, unless the applicant establishes that there are exceptional reasons for the nominated term. The onus remains on the applicant to submit sufficient information in support of their application to allow the Minister to make a decision under the MRA.
 6. As the historical average will move over-time, and in order to provide clarity to applicants, a guidance benchmark of 25 years (which allows five years in excess of historic average) is provided as an indication of when additional evidence of exceptional circumstances will be required. Every application will however be dealt with on a case-by-case basis and on its own merits.
 7. Regardless of any evidence tendered in support of a term exceeding the term historically granted, the Minister may still determine that an extended term is not appropriate, and only grant the ML for a lesser term.
 8. An assessment officer or the Minister may obtain independent expert advice relating to information provided with an ML application. For example, an assessment officer may seek advice from an agency that has financial expertise. This advice may be used to inform the assessment of the application and decision making regarding the ML term.
 9. In the making of any decision, applicants will be afforded all elements of natural justice, procedural fairness and rights of appeal under the MRA.

Important Note: A pre-lodgement meeting with your regional assessment office is highly recommended to discuss supporting evidence for any proposed mining lease or renewal term that exceeds the historic average.

Availability:	External
Location	Business Industry Portal
Owner:	Mineral and Energy Resources Division
Date of this Version	May 2018
Review Date	May 2020
Approving Authority	Director-General
Related documents	This policy should be read in conjunction with the Mining Lease Application Guide .
Contact:	<p>For help and information contact an Assessment Hub</p> <p>Coal Assessment Hub Phone: (07) 4936 0169 Email: CoalHub@dnrme.qld.gov.au</p> <p>Mineral Hub Phone: (07) 4447 9230 Email: MineralHub@dnrme.qld.gov.au</p> <p>For technical support contact the MyMinesOnline Helpdesk. Telephone: +61 7 3199 8133 Email: mines_online@dnrme.qld.gov.au</p> <p>8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.</p>

Disclaimer

The purpose of this policy is to provide a framework for consistent application and interpretation of the legislation administered by the department. Policies may be applied flexibly where individual circumstances require an alternative application of policy. Where this policy, or part of this policy, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency. While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Queensland Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.