

Operational policy

Applying for a mining lease for coal with a prospecting permit

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Version 1.01

Application

This policy relates to the following sections of the *Mineral Resources Act 1989* (MRA):

- ss.13-25 of Chapter 2 Prospecting Permits
- Chapter 4 Part 3 Obtaining exploration permit for coal
- s.232 Land subject to a mining lease
- s.267 Minister may reject application at any time
- s.391 Restrictions on grants etc.

Which are to be considered when assessing a mining lease application for coal with respect to the principles in this policy.

The principles of this policy may also be applied to the Mineral Resource Regulation 2013.

Purpose


The purpose of this policy is to inform industry of the processes and restrictions in relation to applying for a mining lease with a prerequisite prospecting permit over a prospective or highly prospective coal area in Queensland. This policy is written to:

- provide guidance and clarity to applicants, permit holders and departmental officers regarding how the department will assess applications for mining leases for coal using a prospecting permit as a pre-requisite tenure
- promote consistency of permit administration and regulation under the MRA
- promote the purpose and objectives of the resource legislation

The information provided in this policy **does not limit the exercising of discretion** nor does it override legislative requirements however it reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this policy.

Background

On 31 March 2013 the *Mines and Other Legislation Amendment Act 2013* introduced a tendering process for exploration permits for coal in prospective areas and a cash bidding component for highly prospective areas.



The competitive tendering process allows the Department of Natural Resources and Mines (the department) to assess and compare the capabilities of a range of applicants; ensuring land is allocated to the holder most likely to facilitate geological exploration. It also improves the strategic management of coal exploration as introduction of a controlled release of land would allow the department to identify and assess the suitability of areas before they are released.

The implementation of a cash bidding component to the competitive tendering process for potentially highly prospective coal areas reflects the potential in-ground value of the resource for certain areas that are released. It also ensures the Queensland community receives a more appropriate return from these resources.

Prior to the competitive tendering process being introduced **Restricted Area 394** (RA 394) was declared over Queensland to prohibit new applications for coal tenure being submitted while the new tender process was implemented. RA394 essentially prevents any new applications for coal tenure being accepted over any land in Queensland.

RA394 was designed to be a temporary measure until a permanent legislative solution could be developed and enacted. Now that the tendering process has been implemented an exploration permit for coal can only be applied for and granted under the processes outlined in Chapter 4 Part 3 of the MRA, RA394 is no longer necessary and will be repealed.

Applying for a mining lease with a prospecting permit

Under s.232 of the MRA an exploration permit and a prospecting permit are the prerequisite permits for a mining lease (ML). Generally a holder of a prospecting permit is entitled to peg a ML on the available land specified, and then they may make an application for a ML.

Under the MRA there are no statutory restrictions on applying for or being granted a prospecting permit in a prospective or highly prospective coal area. Furthermore there are also no statutory restrictions on making an application for a ML with a prospecting permit in a prospective or highly prospective coal area. Therefore once RA394 is removed, an eligible person could essentially avoid the competitive tender process and obtain a prospecting permit in order to make an application for and subsequently be granted a ML for coal.

The department believes that this scenario has the potential to frustrate the benefits and objectives that the department is seeking to achieve through the competitive tender process for industry and community. Therefore an application for a mining lease in a prospective or highly prospective coal area that is made from a prospecting permit may be rejected by the Minister based on public interest factors.

However the department recognises that there may be circumstances where a mining lease application that is made from a prospecting permit is appropriate. These circumstances are addressed below.

Restriction on mining lease applications

Under s267 of the MRA the Minister, whether or not the chief executive has recommended grant, may reject a ML application if:

- the Minister is satisfied that the applicant has not complied with any requirement placed upon the applicant by or under this Act in respect of the application; or
- the Minister considers that it is not in the public interest for the ML to be granted.

A mining lease application that has been made with a prospecting permit over a prospective or highly prospective coal area may be rejected under s276 of the MRA where the Minister considers that it is **not in the public interest** to grant the ML.

When considering whether or not to grant a ML is in the public interest the Minister may give consideration **to any information** (e.g. departmental policy, community impacts) relevant to the subject matter and the scope and purpose of the MRA (not just matters that pertain to an ML).

Public interest considerations may include whether the application:

- impedes the Government's objective of allocating areas for coal exploration through a competitive tendering process;
- conflicts with the objectives of the MRA;
- decreases certainty for industry and the community in the way entitlements to prospective and highly prospective coal areas are provided for;
- reduces the economic value of Queensland's resource potential;
- disadvantages explorers who may wish to explore coal areas; and
- may impinge on landholder rights as they may not receive the benefits of land access framework (i.e. the benefits of the *Land Access Code* and land access legislation which do not apply to an ML).

This is not intended to be an exhaustive list of public interest factors and the Minister may take into consideration other public interest matters when exercising his/her discretion under s.267 of the MRA.

Important note

All ML applications will be assessed and decided on a case by case basis in accordance with the s267 of the MRA, the principles in this policy and any other relevant policy considerations

When will a mining lease application be accepted?

There are circumstances when a ML application that is made from a prospecting permit may not be rejected by the Minister for public interest reasons under s267 of the MRA.

This will generally be ML applications which are not considered to be avoiding the competitive tender process and therefore within the public interest to be granted.

Examples of where a mining lease may be accepted and approved include:

- where the positive public interest reasons outweigh the negative public interest reasons (examples set out above); or
- the applicant requires the mining lease to expand an existing or proposed mining project such as for access, infrastructure necessary to support existing mining operation, and such mining lease is adjacent to a mining lease(s) already held or applied for; or
- the applicant has obtained the written consent from the holder of an overlapping exploration permit (coal) or mineral development licence (coal), as required by s.248 of the MRA, to apply for an ML over the area of their permit.

Important note

A person aggrieved by an administrative decision, within 28 days of notification of the decision, may apply writing to the decision-maker for a statement of reasons under the Judicial Review Act 1991. If they are not satisfied with the statement of reasons for the decision they may make an application to the Supreme Court of Queensland for a Judicial Review of the decision

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Enquiries:

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