

Operational Policy

Applying for a mining lease for coal with a prospecting permit

MIN/2015/1315
22 January 2020
Version 1.03

Purpose

This policy provides guidance to industry on the processes and restrictions in relation to applying for a mining lease using a prospecting permit as a pre-requisite tenure 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 purposes and objectives of the resources legislation

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

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Relevant Legislation

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 Eligible person may apply for a mining lease
- s.267 Minister may reject application at any time
- s.391 Restrictions on grants etc.

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

Policy Determination

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, Mines and Energy (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 department's strategic management of coal exploration by controlled land releases to 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.

Applying for a mining lease with a prospecting permit

Under s.232 of the MRA an exploration permit for coal, a mineral development licence for coal and a prospecting permit are the prerequisite permits for a coal 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 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.

Restrictions on Mining Lease applications

The department believes that granting MLs for coal from a prospecting permit could frustrate the benefits and objectives 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 grounds using s267 of the MRA.

When considering whether 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; and
- disadvantages explorers who may wish to explore coal areas.

This is not an exhaustive list of public interest factors. The Minister may take into consideration other public interest matters when exercising discretion under s.267.

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 for ML applications that are not considered to be avoiding the competitive tender process and therefore in 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);
- the applicant requires the mining lease to expand an existing or proposed mining project such as for access, infrastructure necessary to support an existing mining operation, and the ML application is adjacent to a ML/s already held or applied for;
- the applicant has obtained 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.

Availability:	External
Location	Business Industry Portal
Owner:	Georesources Division
Date of this Version	22 January 2020
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Approving Authority	Deputy Director General
Related documents	
Contact:	<p>For help and information contact the Coal Assessment Hub Phone: (07) 4936 0169 Email: CoalHub@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.