

Mineral Resources Development Act 1995

Land Owner's Questions

September 2009

Introduction

These notes have been prepared for owners and occupiers of land which may be subject to an application for an exploration licence or mining lease under the *Mineral Resources Development Act 1995*.

The Act is administered by Mineral Resources Tasmania (MRT), a division of the Department of Infrastructure, Energy and Resources.

These notes are intended as a guide only and are not a replacement for the relevant legislation, the *Mineral Resources Development Act 1995* and *Mineral Resources Regulations 1996*.

Who owns the minerals?

Ownership of minerals is complex and varies from title to title:

- Under common law the Crown always owns gold and silver.
- By past legislation the Crown owns oil (which includes mineral oil, natural gas and solid bitumen), helium, atomic substances and geothermal substances.
- Ownership of other minerals depends on the date of original land grant and the Act under which the land was granted.
- Owners of land granted prior to 1 July 1996 always own sand and stone.

What is the difference between exploration and mining?

Exploration is the search for economic mineral deposits by a variety of scientific methods. The holder of an exploration licence may only explore for minerals and is not permitted to engage in mining.

A typical exploration program includes an initial regional data collection phase followed by more specific examination of areas regarded as geologically significant. Small areas considered to be anomalous may then be selected for detailed investigation leading, in only a small proportion of areas, to testing by drilling.

Exploration Licences may be issued for up to 5 years. A licence may cover up to 250 km² (metallic and industrial minerals), 500 km² (construction minerals and coal), or larger areas for oil.

Mining means extracting minerals from the land for the purpose of producing them commercially, and includes processing and treating ore. A mining lease may be issued for any period the

Minister determines and may be renewed. The area of land contained in a lease is to be the minimum area required for mining operations. Individual leases may be consolidated into larger areas.

Will exploration lead to mining?

A decision to mine is usually dependent on the discovery of a mineral deposit of a size and concentration which is commercially viable. Useful information is gained over the full extent of a licence leading to more intensive exploration activities in smaller areas of high prospectivity within the larger area. While exploration may take place over large areas of land the areas subsequently mined, if any, are very small. Only a very small percentage of exploration prospects evolve into mining projects.

Who may apply for an exploration licence or mining lease?

Applications may be made by anyone over the age of 18 years or by a registered body (i.e. registered company or incorporated association).

Prior to the granting of a tenement the applicant must satisfy the Minister for Mines that he:

- is a fit and proper person to hold the tenement;
- intends to comply with the Act;
- has an appropriate program of work;
- is likely to be able to finance the proposed work; and
- has provided the performance and/or rehabilitation bond(s) recommended by the Director of Mines.

How will I know if an application for an exploration licence has been made over my land?

Mineral Resources Tasmania advertises the application prior to the Director of Mines recommending that the Minister grant the licence. The advertisement is placed in the newspaper circulating in the licence application area and generally corresponds with the major Telstra Zones (i.e. *The Mercury* for Southern Tasmania, *The Examiner* for Northern and North Eastern Tasmania and *The Advocate* for North Western and Western Tasmania). The public notice includes application details and a locality plan.

It does not automatically follow that, because your property falls within the area of application, entry on your land will be required. If the licence is granted and entry is required, this might only be for very brief sampling or surveying rather than the more intensive exploration activities. Before any activity may be undertaken on private land, the licensee is required to give at least fourteen days formal notice to the land owner or occupier. This period may be shortened with the approval of the land owner or occupier.

All on-ground exploration activities must be approved in advance by Mineral Resources Tasmania. Where the activity involves any ground disturbance MRT often arranges on-site discussions between the landowner, the explorer and a representative from MRT.

Exploration Licences which include private land are subject to Private Property Bonds which are usually held in the form of a Bank Guarantee. In the uncommon occurrence that an explorer may have damaged private property, Mineral Resources Tasmania has immediate access to funds to rectify any damage.

Can I object to the granting of an exploration licence?

Any person claiming an estate or interest in any land within the area advertised as an application for an exploration licence may object to the granting of the application. Land owners are recognised as having an interest.

Objections must be in writing and must be forwarded, with the prescribed fee, to the Director of Mines within 28 days of the advertisement.

The *Mineral Resources Development Act 1995* places an obligation on the Director of Mines to attempt to resolve disputes before they are formally heard by the Mining Tribunal.

In practice this means that Mineral Resources Tasmania arranges for objectors, who may be land owners, environmental groups, local interest groups or other persons with a specific interest in the area under application, to meet with the applicant and discuss particular concerns.

The outcome of these discussions is often an agreed set of conditions specific to the application area.

If the mediation process is unable to resolve the objection the matter is referred to the Mining Tribunal. The Mining Tribunal is constituted by a Magistrate appointed by the Chief Magistrate. Matters before the Tribunal are dealt with under the Rules of Court set by the *Magistrates Court (Civil Divisions) Act*

1992. Matters before the court are dealt with in a formal manner and parties may be represented by legal practitioners.

The Mining Tribunal is likely to follow precedence, in particular the landmark case *Stowe v. Mineral Holdings*, where it was accepted that the then Warden of Mines was restricted to establishing:

- (1) whether or not an objector had standing; and
- (2) whether or not the application was technically correct.

The outcome of that case was that it is up to the Minister for Mines to determine whether or not it is appropriate to grant a licence if there are other matters that should be taken into consideration.

Are planning and/or environmental permits required for exploration licences?

Exploration carried out under a licence issued under the *Mineral Resources Development Act 1995* does not require specific planning or environmental approval. All exploration programs must be approved by Mineral Resources Tasmania and are conducted to environmental standards set out in the *Mineral Exploration Code of Practice*.

Some activities on exploration licences, such as bulk sampling, are treated on a case-by-case basis and may require specific planning and environmental approval from the local government authority and Environment Tasmania.

When may the holder of an exploration licence commence work?

The major prerequisites for commencement of work on an exploration licence are that the licensee has:

- an approved work program;
- provided environmental impact information;
- supplied a rehabilitation/performance/private property bond;
- formally requested and received approval for on-ground work from the Department;
- formally notified land owners of intention to enter their land; and
- provided proof of a current public liability insurance policy.

What exploration techniques may occur on my land?

Exploration techniques include:

(a) Airborne methods

These are restricted by aviation regulations and do not require entry to your property. They may involve a low flying aircraft measuring the Earth's natural magnetism or the electrical conductivity of the underlying rocks for a short time.

(b) Ground-based methods

These may require ground-based access to your property for a short time in the case of regional exploration, or for a longer time in the case of follow-up activities.

They may involve mapping the surface geology or taking small samples of rock, soil or water for geochemical analysis.

In restricted areas of interest the distribution of rock types may be determined using the natural electrical or magnetic properties of rocks.

In areas of detailed investigation a grid will normally be established. This consists of markers showing reference points on the ground and in areas of dense vegetation may include the cutting of narrow tracks for access.

Drilling is the final test of any anomaly. A truck-mounted or smaller drill is used to test the subsurface geology. Small settling ponds may be established at the drill site.

How will I know if an application for a mining lease has been made over my land?

No mining lease may be granted over private land unless the applicant has satisfied the Minister that he has entered into a compensation agreement with the owner and/or occupier. Applicants are given a maximum of 12 months to provide such agreement.

No lease shall include or apply to any part of the surface of private land which is within 100 metres of any dwelling or other substantial building, any natural or artificial lake, any dam, reservoir, water-producing well or artificial pond without the consent of the owner and occupier.

An applicant for a mining lease must formally mark out his application on the ground. 'Marking Out' requires him to place a formal notice at one of the lease angles. The marking out notice contains details such as:

- the category of mineral applied for;
- the area of land applied for;
- the name and address of the applicant;
- the position of the posted notice in relation to the application area;
- the date of marking out; and
- the name and address of the person marking out the area.

The applicant must forward two copies of the marking out notice to the Director of Mines, one copy of which is placed on a public notice board.

There is generally no public advertisement of mining lease applications, although planning and environmental approvals require public advertisement and provide an opportunity for anyone to comment and/or appeal in regard to proposed mining plans.

The granting of a mining lease gives formal title to the minerals only and is not an authority to start mining.

Can I object to the grant of a mining lease?

Any person claiming any right to, or interest in all or part of the land comprised in any application for lease may object to the granting of the application. An objection must be made within 28 days of marking out. Objections are heard by the Mining Tribunal. Prior to any hearing before the Mining Tribunal the Director of Mines is to attempt to resolve the dispute.

Am I entitled to compensation?

Compensation payable may be determined in respect of the following matters:

- the loss of the use, occupation, and possession of land subject to the mining lease;
- the actual and prospective damage to the surface of the land, or to any buildings or other property of the owner, caused by the mining operations;
- the severance of any part of the land from any other part;
- the loss or damage arising from the use of any right-of-way or easement; and

- all other damage consequent upon, or directly flowing from, any mining operation on the land.

Compensation is not payable for the value of any minerals in or upon the land.

Where the parties are unable to agree on the level of compensation the matter may be referred to the Mining Tribunal where an appropriate level of compensation will be determined.

Am I entitled to royalty?

The *Mineral Resources Development Act 1995* provides for payment of royalty to land owners where the land owner also owns the product being mined. Under the Act, the royalty payable to owners of private mineral rights is at the same rate that is payable to the Crown. The *Mineral Resources Regulations 1996* prescribes the current royalty rates and the method by which 'ad valorem' and profit-based royalties for a number of products are calculated. The Act provides for collection of royalties by Mineral Resources Tasmania on behalf of the owners of some classes of minerals. The fee for this service is 5% of the royalty collected.

Is the land rehabilitated after work takes place?

The holders of exploration licences and mining leases are required to rehabilitate any land disturbed by the carrying out of work on the tenement.

For a mining lease, the rehabilitation work is monitored by Inspectors of Mines who advise lessees on techniques and procedures. Applicants are required to provide Environmental Impact Information which includes planned rehabilitation practices.

Exploration Licence activities are monitored by officers of Mineral Resources Tasmania who must be consulted prior to on-ground activities. A rehabilitation plan may be required where it is warranted.

Rehabilitation plans must take into account any special characteristics of the land, the surrounding environment, the need to stabilise the land and, in the case of mining on agricultural land, the desirability or otherwise of returning the land to a state that is as close as reasonably possible to its former state before the mining lease was granted.

Lessees and licensees are required to lodge a rehabilitation bond with the Department as a guarantee that the obligation to

rehabilitate the land will be met. If it becomes apparent during the term of the tenement that the amount of the rehabilitation bond previously determined is insufficient, a further bond may be required.

Bonds on mining leases are reviewed at change of scale of operations, change of ownership, renewal or five yearly, whichever comes first.

Bonds on exploration licences are reviewed annually.

Rehabilitation works should be carried out progressively in conjunction with mining or exploration activities and must, as far as practicable, be completed prior to the expiry of the tenement.

The return of a rehabilitation bond is conditional on clearance from Departmental officers, who must be satisfied that rehabilitation has been carried out in accordance with the rehabilitation plan, lease or licence conditions and is likely to be successful.

The Minister may take action to rehabilitate land if the land has not been rehabilitated in accordance with the rehabilitation plan or if the Minister believes that further work is necessary. The Minister may only take action to rehabilitate the land if the tenement holder fails to do so after being given a reasonable period in which to undertake the work. The Minister may use the bond to fund the necessary works and may, if the bond is not sufficient to fund all the works required, take action to recover the necessary additional funds from the tenement holder.

Bonds may be retained until such time that the Department is assured that rehabilitation has been successful.

Are planning and/or environmental permits required for mining leases?

A mining project requires planning and environmental approval.

Where the annual disturbance is less than 5000 cubic metres for sand or stone and 1000 tonnes for metallic mines, the operation is classified as a Level I operation and planning and environmental approval is managed by local government authorities.

Above that level, environmental approval is managed by Environment Tasmania and an operator will be required to prepare a Development Proposal and Environmental Management Plan which outlines the manner in which the operator will meet environmental standards.

Mining leases are granted subject to the holder gaining planning and environmental approvals. Mineral Resources Tasmania works closely with Environment Tasmania and local government to ensure that all necessary approvals are obtained prior to commencement of mining activities.

When may the holder of a mining lease commence work?

The major prerequisites for commencement of work on a mining lease are that the lessee has:

- provided a rehabilitation bond;
- provided environmental impact information (major mining activities require an Environmental Management and Mining Plan);
- entered into a compensation agreement with the owner of the land;
- received planning approval and obtained the appropriate licence from the Division of Environmental Control.

Can anyone prospect on my land?

The holder of a prospecting licence may not prospect on private land unless he has the consent of the owner or occupier of the land.

Prospecting licences are issued by Mineral Resources Tasmania at Hobart and are subject to a number of conditions which are printed on the back of the licence document. These conditions specifically forbid disturbance of trees and shrubs, cutting of tracks, damage to or removal of aboriginal or historic artefacts, and usage of mechanical equipment or explosives.

Essentially a prospecting licence authorises the user to prospect for minerals using hand tools only. The licence requires the holder to restore any ground disturbance before leaving the site. Limited samples may be taken from the site.

Acknowledgement

Department of Energy and Minerals, Victoria. 1994. *Land Owners Questions Answered*.

Where can I get further information?

Mineral Resources Tasmania

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Website: <http://www.mrt.tas.gov.au>
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Email: info@mrt.tas.gov.au
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Tenement Administration

Telephone: (03) 6233 8341
(03) 6233 8407

Environmental Management Section

Telephone: (03) 6233 8371
(03) 6233 8367

Mining Inspectors

Telephone: (03) 6233 8356